a library from limiting Internet access to or otherwise protecting against materials other than those referred to in subclauses (I), (II), and (III) of paragraph (1)(A)(i).

''(3) DISABLING DURING CERTAIN USE.—An administrator, supervisor, or other authority may disable a technology protection measure under paragraph (1) to enable access for bona fide research or other lawful purposes.

''(4) TIMING AND APPLICABILITY OF IMPLEMENTATION.—

''(A) IN GENERAL.—A library covered by paragraph (1) shall certify the compliance of such library with the requirements of paragraph (1) as part of the application process for the next program funding year under this Act following the effective date of this subsection, and for each subsequent program funding year thereafter.

''(B) PROCESS.—

''(i) LIBRARIES WITH INTERNET SAFETY POLICIES AND TECHNOLOGY PROTECTION MEASURES IN PLACE.—A library covered by paragraph (1) that has in place an Internet safety policy meeting the requirements of paragraph (1) shall certify its compliance with paragraph (1) during each annual program application cycle under this Act.

''(ii) LIBRARIES WITHOUT INTERNET SAFETY POLICIES AND TECHNOLOGY PROTECTION MEASURES IN PLACE.—A library covered by paragraph (1) that does not have in place an Internet safety policy meeting the requirements of paragraph (1)—

''(I) for the first program year after the effective date of this subsection in which the library applies for funds under this Act, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy that meets such requirements; and

''(II) for the second program year after the effective date of this subsection in which the library applies for funds under this Act, shall certify that such library is in compliance with such requirements.

Any library covered by paragraph (1) that is unable to certify compliance with such requirements in such second program year shall be ineligible for all funding under this Act for such second program year and all subsequent program years until such time as such library comes into compliance with such requirements.

''(iii) WAIVERS.—Any library subject to a certification under clause (ii)(II) that cannot make the certification otherwise required by that clause may seek a waiver of that clause if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by that clause. The library shall notify the Director of the Institute of Museum and Library Services of the applicability of that clause to the library. Such notice shall certify that the library will comply with the requirements in paragraph (1) before the start of the third program year after the effective date of this subsection for which the library is applying for funds under this Act.

''(5) NONCOMPLIANCE.—

''(A) USE OF GENERAL EDUCATION PROVISIONS ACT REMEDIES.—Whenever the Director of the Institute of Museum and Library Services has reason to believe that any recipient of funds this Act is failing to comply substantially with the requirements of this subsection, the Director may—

''(i) withhold further payments to the recipient under this Act,

''(ii) issue a complaint to compel compliance of the recipient through a cease and desist order, or

''(iii) enter into a compliance agreement with a recipient to bring it into compliance with such requirements.

''(B) RECOVERY OF FUNDS PROHIBITED.—The actions authorized by subparagraph (A) are the exclusive remedies available with respect to the failure of a library to comply substantially with a provision of this subsection, and the Director shall not seek a recovery of funds from the recipient for such failure.

''(C) RECOMMENCEMENT OF PAYMENTS.—Whenever the Director determines (whether by certification or other appropriate evidence) that a recipient of funds who is subject to the withholding of payments under subparagraph (A)(i) has cured the failure providing the basis for the withholding of payments, the Director shall cease the withholding of payments to the recipient under that subparagraph.

''(6) SEPARABILITY.—If any provision of this subsection is held invalid, the remainder of this subsection shall not be affected thereby.

''(7) DEFINITIONS.—In this section:

''(A) CHILD PORNOGRAPHY.—The term 'child pornography' has the meaning given such term in section 2256 of title 18, United States Code.

''(B) HARMFUL TO MINORS.—The term 'harmful to minors' means any picture, image, graphic image file, or other visual depiction that—

''(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

''(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

''(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

''(C) MINOR.—The term 'minor' means an individual who has not attained the age of 17.

''(D) OBSCENE.—The term 'obscene' has the meaning given such term in section 1460 of title 18, United States Code.

''(E) SEXUAL ACT; SEXUAL CONTACT.—The terms 'sexual act' and 'sexual contact' have the meanings given such terms in section 2246 of title 18, United States Code.''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect 120 days after the date of the enactment of this Act.

Subtitle B—Universal Service Discounts

SEC. 1721. REQUIREMENT FOR SCHOOLS AND LIBRARIES TO ENFORCE INTERNET SAFETY POLICIES WITH TECHNOLOGY PROTECTION MEASURES FOR COMPUTERS WITH INTERNET ACCESS AS CONDITION OF UNIVERSAL SERVICE DISCOUNTS.

(a) SCHOOLS.—Section 254(h) of the Communications Act of 1934 (47 U.S.C. 254(h)) is amended—

(1) by redesignating paragraph (5) as paragraph (7); and

(2) by inserting after paragraph (4) the following new paragraph (5):

''(5) REQUIREMENTS FOR CERTAIN SCHOOLS WITH COMPUTERS HAVING INTERNET ACCESS.—

''(A) INTERNET SAFETY.—

''(i) IN GENERAL.—Except as provided in clause (ii), an elementary or secondary school having computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the school, school board, local educational agency, or other authority with responsibility for administration of the school—

''(I) submits to the Commission the certifications described in subparagraphs (B) and (C);

''(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the school under subsection (l); and

''(III) ensures the use of such computers in accordance with the certifications.

''(ii) APPLICABILITY.—The prohibition in clause (i) shall not apply with respect to a school that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

''(iii) PUBLIC NOTICE; HEARING.—An elementary or secondary school described in clause (i), or the school board, local educational agency, or other authority with responsibility for administration of the school, shall provide reasonable public notice and hold at least 1 public hearing or meeting to address the proposed Internet safety policy. In the case of an elementary or secondary school other than an elementary or secondary school as defined in section 14101 of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 8801), the notice and hearing required by this clause may be limited to those members of the public with a relationship to the school.

''(B) CERTIFICATION WITH RESPECT TO MINORS.—A certification under this subparagraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school—

''(i) is enforcing a policy of Internet safety for minors that includes monitoring the online activities of minors and the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

''(I) obscene;

''(II) child pornography; or

''(III) harmful to minors; and

''(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors.

''(C) CERTIFICATION WITH RESPECT TO ADULTS.—A certification under this paragraph is a certification that the school, school board, local educational agency, or other authority with responsibility for administration of the school—

''(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

''(I) obscene; or

''(II) child pornography; and

''(ii) is enforcing the operation of such technology protection measure during any use of such computers.

''(D) DISABLING DURING ADULT USE.—An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

''(E) TIMING OF IMPLEMENTATION.—

''(i) IN GENERAL.—Subject to clause (ii) in the case of any school covered by this paragraph as of the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made—

''(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

''(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

''(ii) PROCESS.—

''(I) SCHOOLS WITH INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.—A school covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

''(II) SCHOOLS WITHOUT INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN

PLACE.—A school covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)—

''(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

''(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any school that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all subsequent program years under this subsection, until such time as such school comes into compliance with this paragraph.

''(III) WAIVERS.—Any school subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year program may seek a waiver of subclause (II)(bb) if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A school, school board, local educational agency, or other authority with responsibility for administration of the school shall notify the Commission of the applicability of such subclause to the school. Such notice shall certify that the school in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the school is applying for funds under this subsection.

''(F) NONCOMPLIANCE.—

''(i) FAILURE TO SUBMIT CERTIFICATION.—Any school that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

''(ii) FAILURE TO COMPLY WITH CERTIFICATION.—Any school that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse any funds and discounts received under this subsection for the period covered by such certification.

''(iii) REMEDY OF NONCOMPLIANCE.—

''(I) FAILURE TO SUBMIT.—A school that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the school shall be eligible for services at discount rates under this subsection.

''(II) FAILURE TO COMPLY.—A school that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the school shall be eligible for services at discount rates under this subsection.''.

(b) LIBRARIES.—Such section 254(h) is further amended by inserting after paragraph (5), as amended by subsection (a) of this section, the following new paragraph:

''(6) REQUIREMENTS FOR CERTAIN LIBRARIES WITH COMPUTERS HAVING INTERNET ACCESS.—

''(A) INTERNET SAFETY.—

''(i) IN GENERAL.—Except as provided in clause (ii), a library having one or more computers with Internet access may not receive services at discount rates under paragraph (1)(B) unless the library—

''(I) submits to the Commission the certifications described in subparagraphs (B) and (C); and

''(II) submits to the Commission a certification that an Internet safety policy has been adopted and implemented for the library under subsection (l); and

''(III) ensures the use of such computers in accordance with the certifications.

''(ii) APPLICABILITY.—The prohibition in clause (i) shall not apply with respect to a library that receives services at discount rates under paragraph (1)(B) only for purposes other than the provision of Internet access, Internet service, or internal connections.

''(iii) PUBLIC NOTICE; HEARING.—A library described in clause (i) shall provide reasonable public notice and hold at least 1 public hearing or meeting to address the proposed Internet safety policy.

''(B) CERTIFICATION WITH RESPECT TO MINORS.—A certification under this subparagraph is a certification that the library—

''(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

''(I) obscene;

''(II) child pornography; or

''(III) harmful to minors; and

''(ii) is enforcing the operation of such technology protection measure during any use of such computers by minors.

''(C) CERTIFICATION WITH RESPECT TO ADULTS.—A certification under this paragraph is a certification that the library—

''(i) is enforcing a policy of Internet safety that includes the operation of a technology protection measure with respect to any of its computers with Internet access that protects against access through such computers to visual depictions that are—

''(I) obscene; or

''(II) child pornography; and

''(ii) is enforcing the operation of such technology protection measure during any use of such computers.

''(D) DISABLING DURING ADULT USE.—An administrator, supervisor, or other person authorized by the certifying authority under subparagraph (A)(i) may disable the technology protection measure concerned, during use by an adult, to enable access for bona fide research or other lawful purpose.

''(E) TIMING OF IMPLEMENTATION.—

''(i) IN GENERAL.—Subject to clause (ii) in the case of any library covered by this paragraph as of the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certification under subparagraphs (B) and (C) shall be made—

''(I) with respect to the first program funding year under this subsection following such effective date, not later than 120 days after the beginning of such program funding year; and

''(II) with respect to any subsequent program funding year, as part of the application process for such program funding year.

''(ii) PROCESS.—

''(I) LIBRARIES WITH INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.—A library covered by clause (i) that has in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C) shall certify its compliance with subparagraphs (B) and (C) during each annual program application cycle under this subsection, except that with respect to the first program funding year after the effective date of this paragraph under section 1721(h) of the Children's Internet Protection Act, the certifications shall be made not later than 120 days after the beginning of such first program funding year.

''(II) LIBRARIES WITHOUT INTERNET SAFETY POLICY AND TECHNOLOGY PROTECTION MEASURES IN PLACE.—A library covered by clause (i) that does not have in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C)—

''(aa) for the first program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is undertaking such actions, including any necessary procurement procedures, to put in place an Internet safety policy and technology protection measures meeting the requirements necessary for certification under subparagraphs (B) and (C); and

''(bb) for the second program year after the effective date of this subsection in which it is applying for funds under this subsection, shall certify that it is in compliance with subparagraphs (B) and (C).

Any library that is unable to certify compliance with such requirements in such second program year shall be ineligible for services at discount rates or funding in lieu of services at such rates under this subsection for such second year and all subsequent program years under this subsection, until such time as such library comes into compliance with this paragraph.

''(III) WAIVERS.—Any library subject to subclause (II) that cannot come into compliance with subparagraphs (B) and (C) in such second year may seek a waiver of subclause (II)(bb) if State or local procurement rules or regulations or competitive bidding requirements prevent the making of the certification otherwise required by such subclause. A library, library board, or other authority with responsibility for administration of the library shall notify the Commission of the applicability of such subclause to the library. Such notice shall certify that the library in question will be brought into compliance before the start of the third program year after the effective date of this subsection in which the library is applying for funds under this subsection.

''(F) NONCOMPLIANCE.—

''(i) FAILURE TO SUBMIT CERTIFICATION.—Any library that knowingly fails to comply with the application guidelines regarding the annual submission of certification required by this paragraph shall not be eligible for services at discount rates or funding in lieu of services at such rates under this subsection.

''(ii) FAILURE TO COMPLY WITH CERTIFICATION.—Any library that knowingly fails to ensure the use of its computers in accordance with a certification under subparagraphs (B) and (C) shall reimburse all funds and discounts received under this subsection for the period covered by such certification.

''(iii) REMEDY OF NONCOMPLIANCE.—

''(I) FAILURE TO SUBMIT.—A library that has failed to submit a certification under clause (i) may remedy the failure by submitting the certification to which the failure relates. Upon submittal of such certification, the library shall be eligible for services at discount rates under this subsection.

''(II) FAILURE TO COMPLY.—A library that has failed to comply with a certification as described in clause (ii) may remedy the failure by ensuring the use of its computers in accordance with such certification. Upon submittal to the Commission of a certification or other appropriate evidence of such remedy, the library shall be eligible for services at discount rates under this subsection.''.

(c) DEFINITIONS.—Paragraph (7) of such section, as redesignated by subsection (a)(1) of this section, is amended by adding at the end the following:

''(D) MINOR.—The term 'minor' means any individual who has not attained the age of 17 years.

''(E) OBSCENE.—The term 'obscene' has the meaning given such term in section 1460 of title 18, United States Code.

''(F) CHILD PORNOGRAPHY.—The term 'child pornography' has the meaning given such term in section 2256 of title 18, United States Code.

''(G) HARMFUL TO MINORS.—The term 'harmful to minors' means any picture, image, graphic image file, or other visual depiction that—

''(i) taken as a whole and with respect to minors, appeals to a prurient interest in nudity, sex, or excretion;

''(ii) depicts, describes, or represents, in a patently offensive way with respect to what is suitable for minors, an actual or simulated sexual act or sexual contact, actual or simulated normal or perverted sexual acts, or a lewd exhibition of the genitals; and

''(iii) taken as a whole, lacks serious literary, artistic, political, or scientific value as to minors.

''(H) SEXUAL ACT; SEXUAL CONTACT.—The terms 'sexual act' and 'sexual contact' have the meanings given such terms in section 2246 of title 18, United States Code.

''(I) TECHNOLOGY PROTECTION MEASURE.—The term 'technology protection measure' means a specific technology that blocks or filters Internet access to the material covered by a certification under paragraph (5) or (6) to which such certification relates.''.

(d) CONFORMING AMENDMENT.—Paragraph (4) of such section is amended by striking ''paragraph (5)(A)'' and inserting ''paragraph (7)(A)''.

(e) SEPARABILITY.—If any provision of paragraph (5) or (6) of section 254(h) of the Communications Act of 1934, as amended by this section, or the application thereof to any person or circumstance is held invalid, the remainder of such paragraph and the application of such paragraph to other persons or circumstances shall not be affected thereby.

(f) REGULATIONS.—

(1) REQUIREMENT.—The Federal Communications Commission shall prescribe regulations for purposes of administering the provisions of paragraphs (5) and (6) of section 254(h) of the Communications Act of 1934, as amended by this section.

(2) DEADLINE.—Notwithstanding any other provision of law, the Commission shall prescribe regulations under paragraph (1) so as to ensure that such regulations take effect 120 days after the date of the enactment of this Act.

(g) AVAILABILITY OF CERTAIN FUNDS FOR ACQUISITION OF TECHNOLOGY PROTECTION MEASURES.

(1) IN GENERAL.—Notwithstanding any other provision of law, funds available under section 3134 or part A of title VI of the Elementary and Secondary Education Act of 1965, or under section 231 of the Library Services and Technology Act, may be used for the purchase or acquisition of technology protection measures that are necessary to meet the requirements of this title and the amendments made by this title. No other sources of funds for the purchase or acquisition of such measures are authorized by this title, or the amendments made by this title.

(2) TECHNOLOGY PROTECTION MEASURE DEFINED.—In this section, the term ''technology protection measure'' has the meaning given that term in section 1703.

(h) EFFECTIVE DATE.—The amendments made by this section shall take effect 120 days after the date of the enactment of this Act.

Subtitle C—Neighborhood Children's Internet Protection

SEC. 1731. SHORT TITLE.

This subtitle may be cited as the ''Neighborhood Children's Internet Protection Act''.

SEC. 1732. INTERNET SAFETY POLICY REQUIRED.

Section 254 of the Communications Act of 1934 (47 U.S.C. 254) is amended by adding at the end the following:

''(l) INTERNET SAFETY POLICY REQUIREMENT FOR SCHOOLS AND LIBRARIES.—

''(1) IN GENERAL.—In carrying out its responsibilities under subsection (h), each school or library to which subsection (h) applies shall—

''(A) adopt and implement an Internet safety policy that addresses—

''(i) access by minors to inappropriate matter on the Internet and World Wide Web;

''(ii) the safety and security of minors when using electronic mail, chat rooms, and other forms of direct electronic communications;

''(iii) unauthorized access, including so-called 'hacking', and other unlawful activities by minors online;

''(iv) unauthorized disclosure, use, and dissemination of personal identification information regarding minors; and

''(v) measures designed to restrict minors' access to materials harmful to minors; and

''(B) provide reasonable public notice and hold at least one public hearing or meeting to address the proposed Internet safety policy.

''(2) LOCAL DETERMINATION OF CONTENT.—A determination regarding what matter is inappropriate for minors shall be made by the school board, local educational agency, library, or other authority responsible for making the determination. No agency or instrumentality of the United States Government may—

''(A) establish criteria for making such determination;

''(B) review the determination made by the certifying school, school board, local educational agency, library, or other authority; or

''(C) consider the criteria employed by the certifying school, school board, local educational agency, library, or other authority in the administration of subsection (h)(1)(B).

''(3) AVAILABILITY FOR REVIEW.—Each Internet safety policy adopted under this subsection shall be made available to the Commission, upon request of the Commission, by the school, school board, local educational agency, library, or other authority responsible for adopting such Internet safety policy for purposes of the review of such Internet safety policy by the Commission.

''(4) EFFECTIVE DATE.—This subsection shall apply with respect to schools and libraries on or after the date that is 120 days after the date of the enactment of the Children's Internet Protection Act.''.

SEC. 1733. IMPLEMENTING REGULATIONS.

Not later than 120 days after the date of enactment of this Act, the Federal Communications Commission shall prescribe regulations for purposes of section 254(l) of the Communications Act of 1934, as added by section 1732 of this Act.

Subtitle D—Expedited Review

SEC. 1741. EXPEDITED REVIEW.

(a) THREE-JUDGE DISTRICT COURT HEARING.—Notwithstanding any other provision of law, any civil action challenging the constitutionality, on its face, of this title or any amendment made by this title, or any provision thereof, shall be heard by a district court of 3 judges convened pursuant to the provisions of section 2284 of title 28, United States Code.

(b) APPELLATE REVIEW.—Notwithstanding any other provision of law, an interlocutory or final judgment, decree, or order of the court of 3 judges in an action under subsection (a) holding this title or an amendment made by this title, or any provision thereof, unconstitutional shall be reviewable as a matter of right by direct appeal to the Supreme Court. Any such appeal shall be filed not more than 20 days after entry of such judgment, decree, or order.

This Act may be cited as the ''Miscellaneous Appropriations Act, 2001''.

MISCELLANEOUS APPROPRIATIONS

Following is explanatory language on H.R. 5666, as introduced on December 15, 2000.

The conferees on H.R. 4577 agree with the matter included in H.R. 5666 and enacted in this conference report by reference and the following description of it.

DIVISION A

CHAPTER 1

GENERAL PROVISIONS—THIS CHAPTER

The conference agreement includes language which: provides that not more than $100,000 shall be available for guarantees of private sector rural electrification and telecommunications loans; clarifies that a housing demonstration program is to be carried out in Mississippi and Alaska; clarifies that the Initiative for Future Agriculture and Food Systems shall be used to make grants only to colleges, universities, or research foundations maintained by a college or university; makes a technical correction to the Rural Community Advancement Program to specify that funds may be used in counties which have received an emergency designation after January 1, 2000; provides certain transfers under the livestock assistance program; clarifies eligibility for quality losses; clarifies that Emergency Conservation Program funds previously appropriated for the Cerro Grande fire can be made available for drought benefits; clarifies a provision regarding payments to producers that suffered losses because of the insolvency of an agriculture cooperative in the State of California; provides that Burley, Flue-cured, and Cigar Binder Type 54–55 tobacco will be treated identically for loan forfeiture purposes; and establishes an effective date for a provision of the Agricultural Risk Protection Act of 2000 regarding limitations on Burley tobacco quota adjustments. The effective date of these provisions is the date of enactment of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2001.

The conference agreement includes a section maintaining the eligibility of certain rural areas for U.S. Department of Agriculture rural housing programs.

The conference agreement includes a section that authorizes a study on the feasibility of including ethanol, biodiesel, and other bio-based fuels as part of the Strategic Petroleum Reserve.

The conference agreement includes a section that makes the City of Wilson, NC, eligible for certain U.S. Department of Agriculture rural development programs.

The conference agreement includes a section that provides $26,000,000 for the Environmental Quality Incentives Program.

The conference agreement includes a section regarding the operation of the ongoing bovine tuberculosis eradication program. The intent of the conferees is that funding for this program, which is financed through the Commodity Credit Corporation, shall provide a total of not less than $60,259,000.

The conferees expect that, in developing any consumer guidance regarding mercury exposure from seafood consumption, the Department of Health and Human Services will rely upon the results of more than one relevant study. The Secretary is directed to submit a report to the Committees on Appropriations by February 28, 2001, on any actions regarding a consumer advisory on this subject.

The conferees urge USDA's Animal and Plant Health Inspection Service (APHIS) to uphold approved sanitary and phytosanitary measures in relation to shipping and cargo materials returning to the United States as a result of trade with Cuba. The conferees urge APHIS to exercise vigilance in the adoption of internal measures to insure that returning containers and shipping materials do not present sanitary or phytosanitary risks to American agriculture or the environment, and to explore the formation of a bilateral cooperative agreement with Cuba to provide for pre-departure inspections of containers leaving Cuba. The conferees also encourage APHIS to work in cooperation with the Departments of Agriculture of the states which will serve as the ports of reentry for these shipping materials and containers.

The conference agreement includes a section that makes funding provided in Section

211(b) of the Agriculture Risk Protection Act of 2000 (P.L. 106–224) available for the Farmland Protection Program.

The conference agreement provides an additional $500,000 to hire additional attorneys for the Trade Practices Division of the Office of the General Counsel to enforce the Packers and Stockyards Act.

The conference agreement provides an additional $200,000 for the Grain Inspection, Packers and Stockyards Administration to establish a hog contract library.

The conference agreement includes language making available funds of the Emergency Watershed Program to accelerate completion of the Hamakua Ditch project in Hawaii.

CHAPTER 2

DEPARTMENT OF JUSTICE

FEDERAL PRISON SYSTEM

SALARIES AND EXPENSES

The conference agreement includes $500,000 for the National Institute of Corrections (NIC) for a comprehensive assessment of medical care and incidents of inmate mortality in the Wisconsin State Prison System.

OFFICE OF JUSTICE PROGRAMS

JUSTICE ASSISTANCE

The conference agreement includes $300,000 to expand the collection of data on prisoner deaths while in law enforcement custody.

COMMUNITY ORIENTED POLICING SERVICES

The conference agreement includes $3,080,000 under this heading, of which $1,880,000 is for a grant to the Pasadena, California, Police Department for equipment; $200,000 is for a grant to the City of Signal Hill, California, for equipment and technology for an emergency operations center; and of which $1,000,000 is for a grant to the State of Alabama Department of Forensic Sciences for equipment.

JUVENILE JUSTICE PROGRAMS

The conference agreement includes $1,000,000 for a grant to Mobile County, Alabama, for a juvenile court network program.

GENERAL PROVISIONS

Sec. 201. The conference agreement includes a provision making technical changes to Chapter 2 of title II of division B of Public Law 106–246.

Sec. 202. The conference agreement includes a provision appropriating $10,000,000 to the State of Texas and $2,000,000 to the State of Arizona to reimburse county and municipal governments only for Federal costs associated with the handling and processing of illegal immigration and drug and alien smuggling cases.

Sec. 203. The conference agreement includes $9,000,000 to establishment of the Strom Thurmond Boy & Girls Club National Training Center.

Sec. 204. The conference agreement includes $500,000 for the New Hampshire Department of Safety to investigate and support the prosecution of violations of federal trucking laws.

Sec. 205. The conference agreement includes $4,000,000 for the State of South Dakota to establish a regional radio system.

DEPARTMENT OF COMMERCE

ECONOMIC AND STATISTICAL ANALYSIS

SALARIES AND EXPENSES

The conference agreement includes $200,000 for the establishment of satellite accounts for the travel and tourism industry.

NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

OPERATIONS, RESEARCH, AND FACILITIES

The conference agreement includes $750,000 for a study by the National Academy of Sciences pursuant to H.R. 2090, as passed by the House of Representatives on September 12, 2000.

In addition, the conferees encourage the National Oceanic and Atmospheric Administration (NOAA) and the Federal Maritime Administration (FMA) to work collaboratively with the Great Lakes Science Center in Cleveland, Ohio in support of its Great Lakes Tour simulator and related education programming.

The conferees also direct the National Oceanic and Atmospheric Administration (NOAA) to develop a plan to establish a program for migrating the 8 mm NEXRAD Level II data archives onto a modern retrievable media, and to report back to the Committees on Appropriations by February 1, 2001.

Sec. 206. The conference agreement includes a technical change to funding provided to the National Marine Fisheries Management Service regarding Stellar sea lion related funding.

Sec. 207. The conference agreement includes $7,500,000 for assistance to certain Alaska fisheries.

Sec. 208. The conference agreement includes $3,000,000 for assistance to certain Hawaii fisheries.

Sec. 209. The conference agreement includes a provision regarding the Bering Sea/Aleutian Island and Gulf of Alaska fisheries.

Sec. 210. The conference agreement includes $500,000 for the Irish Institute.

Sec. 211. The conference agreement includes $5,000,000 to increase coverage and hours of Radio Free Europe/Radio Liberty (RFE/RL) and Voice of America (VOA) broadcasts to Russia and surrounding areas affected by the recent restrictions on media instituted by the Putin regime. In addition, the conference agreement includes $5,000,000 for Radio Free Asia and the Voice of America to increase both the quantity and quality of their broadcasts to China, in accordance with authorization contained in the China PNTR enacting legislation, Section 701(b)(2) of H.R. 4444.

Before using any of the transfer authority provided in this section and within sixty days of enactment of this act, the Broadcasting Board of Governors shall provide to the Committees on Appropriations a spending plan for the total amount provided. This plan should emphasize new RL and VOA Russian and related broadcasts in specific areas most impacted by the recent media restrictions. Also included in the spending plan should be a projection concerning shortwave and medium wave technology needs in this newly closed environment. Amounts proposed for transfer to the Broadcasting Capital Improvements account should be based solely on increased broadcasting to Russia and surrounding areas and to China.

RELATED AGENCIES

COMMISSION ON ONLINE CHILD PROTECTION

The conference agreement includes $750,000 for the Commission on Online Child Protection.

SMALL BUSINESS ADMINISTRATION

SALARIES AND EXPENSES

The conference agreement includes $1,000,000 for a grant to establish an electronic commerce technology distribution center in Scranton, Pennsylvania.

Sec. 212. The conference agreement includes $1,000,000 for the National Museum of Jazz.

GENERAL PROVISION—THIS CHAPTER

Sec. 213. The conference agreement includes a provision striking sections 406, 635 and 636, and making technical changes to H.R. 5548.

CHAPTER 3

DEPARTMENT OF DEFENSE

INDIRECT AIRFREIGHT CARRIERS

The conferees urge the Air Mobility Command (AMC) to ensure that military air freight is moved in the most time efficient manner possible. In furtherance of that goal, the conferees believe that the Civil Reserve Air Fleet (CRAF) program should admit and encourage indirect airfreight carriers which have demonstrated ability to provide efficient, cost effective service.

DISTRIBUTIVE TRAINING TECHNOLOGY PROGRAM

Public Law 106–259 provided $29,100,000 in ''Other Procurement, Army'' and $65,700,000 in ''Operation and Maintenance, Army National Guard'' for the National Guard Distance Learning Program. It is the conferees' intention that the funds appropriated for this program shall also be available for courseware development and commercial off-the-shelf (COTS) management system software and hardware.

BIOLOGICAL WARFARE DEFENSE

The conferees direct that of the funds appropriated in the Department of Defense Appropriations Act, 2001 (Public Law 106–259) for the Biological Warfare Defense program, under ''Research, Development, Test and Evaluation, Defense-Wide'', $2,000,000 shall be used only for sensor development in the Defense Advanced Research Projects Agency's Standoff/Bioagent Pathogen Detector System program.

CANCER RESEARCH

The conferees direct that, using funds appropriated in the Department of Defense Appropriations Act, 2001 for medical research programs, the Assistant Secretary of Defense (Health Affairs) conduct a study on whether environmental factors, such as air pollutants and electromagnetic radiation, contribute to a higher than usual rate of incidence of breast cancer in large populations.

BALLISTIC MISSILE DEFENSE ORGANIZATION

In the Department of Defense Appropriations Act, 2001 (Public Law 106–259), the Congress provided additional funds for National Missile Defense risk reduction activities. The Defense Department is reviewing carefully potential enhancements to the NMD test program, including the addition of flight tests as well as the collection of data on various targets and countermeasures. To support these flight test program enhancements, the conferees direct that $3,000,000 of the NMD risk reduction increase be allocated to sensor enhancements and flight test activities outlined in the Arctic Missile Signature Measurement Program (AMSP).

GENERAL PROVISIONS—THIS CHAPTER

The conference agreement includes a general provision (section 301) allowing obligation of a portion of the fiscal year 2001 procurement funds for the F–22 aircraft, under specified circumstances.

The conference agreement includes a general provision (section 302) which transfers primary jurisdiction over Shemya Island.

The conference agreement includes a general provision (section 303) requiring the Ballistic Missile Defense Organization to purchase no less than 40 PAC–3 missiles, the budgeted quantity, with fiscal year 2001 appropriated funds.

The conference agreement includes a general provision (section 304) which amends section 8133 of the Department of Defense Appropriations Act, 2001 (Public Law 106–259), regarding the amount of transfer authority available to the Secretary of the Navy for ship cost changes.

The conference agreement includes a general provision (section 305) which provides

the Secretary of a military department with authority to transfer funds in support of Fisher Houses and Fisher Suites.

The conference agreement includes a general provision (section 306) providing such sums as required to the Defense Vessel Transfer Program Account for the costs of the lease-sale transfers authorized by the National Defense Authorization Act, 2001.

The conference agreement includes a general provision (section 307) clarifying congressional intent concerning a Gulf War illness research program.

The conference agreement includes a general provision (section 308) providing $150,000,000 in emergency appropriations to the Department of Defense, for ''Operation and Maintenance, Navy'', for the repair of the U.S.S. Cole, which was severely damaged in a terrorist attack in the port of Aden, Yemen, on October 12, 2000. These funds are in addition to any amounts appropriated in the Department of Defense Appropriations Act, 2001 (Public Law 106–259), and are designated as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985, as amended. In addition to the repair, the Navy may expend necessary amounts from these funds for the necessary stabilization of the vessel and its transportation to the United States.

The conference agreement includes a general provision (section 309) making technical corrections to Section 1092 of the National Defense Authorization Act, 2001, regarding the establishment of an Aerospace Commission.

The conference agreement includes a general provision (section 310) which provides $2,000,000 only for planning and National Environmental Protection Act documentation for the proposed airfield and heliport at the Marine Corps Air Ground Task Training Command.

The conference agreement includes a general provision (section 311) which transfers $5,000,000 to carry out the provisions of the Minuteman Missile National Historic Site Establishment Act of 1999 (Public Law 106–115; 113 Stat. 1540).

The conference agreement includes a general provision (section 312) providing the Secretary of the Air Force with authority to transfer certain excess property.

The conference agreement includes a general provision (section 313) providing $100,000,000 in emergency appropriations for the Overseas Contingency Operations Transfer Fund, to meet classified requirements requested by the Administration. Further details are provided in a classified annex to the Statement of Managers.

The conference agreement includes a general provision (section 314) providing for the use of up to $3,000,000 for Marine Corps research into nanotechnology for consequence management.

The conference agreement includes a general provision (section 315) specifying the use of funds made available in the Department of Defense Appropriations Act, 2000, for certain defense medical initiatives.

The conference agreement includes a general provision (section 316) providing for the acquisition of certain real property by the Secretary of the Navy.

The conference agreement includes a general provision (section 317) regarding the establishment of Marine Fire Training Centers.

The conference agreement includes a general provision (section 318) providing the Navy authority to use funds provided in the Department of Defense Appropriations Act, 2001, for the repair of the ex-Turner Joy.

The conference agreement includes a general provision (section 319) providing funds to accelerate transition of the information technology and information services outsourcing activity within the National Imagery and Mapping Agency.

The conference agreement includes a general provision (section 320) restricting the use of funds provided in the Department of Defense Appropriations Act, 2001 for Air Force radar operations maintenance and support programs or contracts.

The conference agreement includes a general provision (section 321) providing $1,000,000 for ''Research, Development, Test and Evaluation, Air Force'', to develop rapid diagnostic and fingerprinting techniques along with molecular monitoring systems for the detection of nosocomial infections.

The conference agreement includes a general provision (section 322), making technical adjustments associated with funding provided in the Department of Defense Appropriations Act, 2001 for the C3RP initiative.

The conference agreement includes a general provision (section 323) which establishes procedures under which the Departments of Defense and Interior shall provide the Congress with a comprehensive plan and proposed legislation for expansion of the U.S. Army's National Training Center at Fort Irwin, California. These procedures, including specific timelines for developing and implementing a proposed expansion plan and meeting the requirements of the Endangered Species and National Environmental Policy Acts, are the joint recommendations of the Secretaries of Defense and Interior to the Congress.

The Secretaries have informed the Congress that, given the urgency of the national security considerations involved and the significant amount of research and analysis which has already been conducted, their Departments can expedite the various substantive and procedural reviews required to implement this expansion. The conferees commend the Secretaries of Defense and Interior for the considerable progress made in recent months amongst the various executive branch agencies involved in this process, and for committing their Departments to meet the specific objectives contained in the general provision.

CHAPTER 4

DISTRICT OF COLUMBIA FEDERAL FUNDS

FEDERAL PAYMENT OF THE DISTRICT OF COLUMBIA COURTS

The conference agreement appropriates $400,000 in Federal funds to the District of Columbia courts to cover the costs of a fire that broke out on November 22, 2000, in the H. Carl Moultrie I Courthouse. The appropriation includes $350,000 for capital repairs and $50,000 for miscellaneous operating expenses in connection with the fire damage. The conference agreement also includes language that allows the courts to reallocate not more than $1,000,000 of funds already appropriated for fiscal year 2001 in the event the $400,000 is not sufficient to cover the costs. The fire caused extensive damage to the Superior Court's Family Division Quality Control Office and less severe damage to six adjacent judges' chambers, electrical damage to the court's cell block area, and damage to electrical and communications wiring.

GENERAL PROVISIONS—THIS CHAPTER

Sec. 401. The conference agreement inserts a new section concerning water and sewer payments by Federal agencies to the District of Columbia and requires the inspector general of each Federal entity to submit quarterly reports to the House and Senate Committees on Appropriations on the promptness of payment by the agency for water and sewer services furnished by the District.

Sec. 402. The conference agreement inserts a new section as requested by District officials that repeals a Federal statute enacted in 1866 to convey certain parcels of land to the District to be used solely for schools. The property is at 12th and E Streets, N.E., in the North Lincoln Park neighborhood of Capitol Hill and is the site of the Lovejoy School which ceased being used as a school in 1984, 118 years after the land was conveyed. The DC public school system is under contract to sell the property and although the City Council has passed local legislation to repeal the 1866 law, Federal legislation in necessary because the District government does not have the authority to pass legislation affecting a Federal land interest.

Sec. 403. The conference agreement inserts a new section that amends language in section 160 of the FY 2000 DC Appropriations Act concerning the Victims of Violent Crime Compensation Act of 1996 that would have required any unobligated balance in excess of $250,000 to be transferred to miscellaneous receipts of the U.S. Treasury. The new section allows the use of $250,000 at the discretion of District officials and requires that amounts in excess of $250,000 be used in accordance with a plan developed by the District and approved by the House and Senate Committees on Appropriations, the House Committee on Government Reform, and the Senate Committee on Governmental Affairs. The language also requires that not less than 80 percent of the amounts in excess of $250,000 be used for direct compensation payments to crime victims.

Sec. 404. The conference agreement includes a new section concerning the Reserve Fund for the District of Columbia established pursuant to the District of Columbia Appropriations Act, 2001 (Public Law 106–522, approved November 22, 2000).

Sec. 405. The conference agreement includes a new section that conforms the enrollment count of the District of Columbia charter schools with existing District of Columbia law.

Sec. 406. The conference agreement amends H.R. 4942 by repealing the District of Columbia Appropriations Act, 2001, as contained therein. Since this appropriations Act has already been enacted in H.R. 5633 (Public Law 106–428) including it in H.R. 4942 is no longer necessary.

CHAPTER 5

ENERGY AND WATER DEVELOPMENT

DEPARTMENT OF DEFENSE—CIVIL

DEPARTMENT OF THE ARMY

CORPS OF ENGINEERS—CIVIL

GENERAL INVESTIGATIONS

The conference agreement includes an additional $900,000 for General Investigations. Of the funds provided, $100,000 is for a reconnaissance study of shore protection needs at North Topsail Beach, North Carolina; $100,000 is for a reconnaissance study for a water infrastructure project in Passaic County, New Jersey; $100,000 is for a reconnaissance study of flooding, drainage, and other related problems in the Cayuga Creek Watershed, New York; and $600,000 is for a cost-shared feasibility study of the restoration of the lower St. Anthony's Falls natural rapids in Minnesota.

CONSTRUCTION, GENERAL

The conference agreement includes an additional $2,750,000 for Construction, General. Of the funds provided, $75,000 shall be available for planning and design of a project to provide for floodplain evacuation in the watershed of Pond Creek, Kentucky; $100,000 shall be available for the design of recreation

and access features at the Louisville Waterfront Park in Kentucky; $75,000 shall be available for research on the eradication of Eurasian water milfoil in Houghton Lake, Michigan; and $500,000 shall be available for a Limited Reevaluation Report for the Central Boca Raton segment of the Palm Beach County, Florida, shore protection project. The conferees are concerned that the utter lack of sand on some stretches of beach in Boca Raton is negatively impacting the local economy that is dependent on tourism. Therefore, the conferees recommend that the Corps of Engineers proceed as expeditiously as possible to renourish the beach in Boca Raton.

In addition, $2,000,000 of the funds provided shall be available to initiate design and construction of the Hawaii Water Management Project, including Waiahole Ditch on Oahu, Kau Ditch on Maui, Pioneer Mill Ditch on Hawaii, and the complex system on the west side of Kauai.

In addition, language has been included which provides that the Secretary of the Army may use up to $5,000,000 of previously appropriated funds to carry out the Abandoned and Inactive Noncoal Mine Restoration program authorized by section 560 of Public Law 106–53.

FLOOD CONTROL, MISSISSIPPI RIVER AND TRIBUTARIES, ARKANSAS, ILLINOIS, KENTUCKY, LOUISIANA, MISSISSIPPI, MISSOURI, AND TENNESSEE

The conference agreement includes an additional $3,500,000 for Flood Control, Mississippi River and Tributaries to be used for the repair, restoration or maintenance of Mississippi River levees and for the correction of deficiencies in the mainline Mississippi River levees.

DEPARTMENT OF THE INTERIOR

BUREAU OF RECLAMATION

WATER AND RELATED RESOURCES

The conference agreement includes an additional $2,000,000 for Water and Related Resources for construction of the Mid-Dakota Rural Water System project in South Dakota.

DEPARTMENT OF ENERGY

ENERGY PROGRAMS

ENERGY SUPPLY

The conference agreement includes an additional $800,000 for Energy Supply for the Prime, LLC, of central South Dakota, for final engineering and project development of the integrated ethanol complex, including an ethanol unit, waste treatment system, and enclosed cattle feed lot.

SCIENCE

The conference agreement includes an additional $1,000,000 for Science for high temperature superconducting research and development at Boston College.

CHATPER 6

GENERAL PROVISIONS—THIS CHAPTER

Sec. 601. The conference agreement mandates that not less than $1,350,000 from funds appropriated under this heading in the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001, shall be available only for the Protection Project to continue its study of international trafficking, prostitution, slavery, debt bondage and other abuses of women and children.

Sec. 602. Embassy Compensation Authority.—The conference agreement contains language that authorizes the use of funds appropriated to the account ''Economic Support Fund'' in Public Law 106–429 for payment to the government of the People's Republic of China for property loss and damage arising out of the May 7, 1999 incident in Belgrade, Federal Republic of Yugoslavia. These funds may be made available notwithstanding any other provision of law.

CHAPTER 7

DEPARTMENT OF THE INTERIOR

BUREAU OF LAND MANAGEMENT

LAND ACQUISITION

The conference agreement provides $5,000,000 for land exchanges authorized by Title VI of the Steens Mountain Cooperative Management and Protection Act.

UNITED STATES FISH AND WILDLIFE SERVICE

RESOURCE MANAGEMENT

The conference agreement provides $500,000 for a grant to the Center for Reproductive Biology at Washington State University for basic research on reproduction abnormalities that could be causing reductions in salmon in the Columbia/Snake River system due to presence of high estrogen levels in the water. The research may also be beneficial to human health conditions affected by the same water borne chemicals.

MULTINATIONAL SPECIES CONSERVATION FUND

The conference agreement provides $750,000 for recently authorized Great Ape conservation activities.

NATIONAL PARK SERVICE

OPERATION OF THE NATIONAL PARK SYSTEM

The conference agreement provides $100,000 for the National Capital Region to complete a feasibility study and select a preferred alternative site for constructing a boathouse in Arlington County, Virginia.

The Department of Justice, in cooperation with the City of Alexandria and the National Park Service, is encouraged to seek expeditious settlement with the remaining six landowners on the Alexandria, Virginia waterfront to achieve the urban land use and design objectives of the city and the National Park Service in bringing this long-standing lawsuit to resolution. In settling these claims, the Justice Department should use, to the extent authorized by law, the permanent judgment appropriation established pursuant to 31 U.S.C. 1304 as the source of any compensation to the landowners that may be required.

NATIONAL RECREATION AND PRESERVATION

The conference agreement provides $1,600,000 for National Recreation and Preservation. Within the statutory aid account, $500,000 is specifically for continued activities at the National Constitution Center in Philadelphia, Pennsylvania. The remaining $1,100,000 is for a grant to the Historic New Bridge Landing Park Commission for acquisition of land immediately adjacent to the Historic New Bridge Landing, which is a site listed on the National Register of Historic Places and is a site of historic significance in the revolutionary war.

HISTORIC PRESERVATION FUND

The conference agreement provides $100,000 to be provided to the Massillon Heritage Foundation, Inc. in Massillon, Ohio. The Secretary is directed to provide this grant as soon as possible for critical repair and replacement needs.

CONSTRUCTION

The conference agreement provides $3,500,000 for construction. Within that amount $1,500,000 is for reconstruction and renovation at the Stones River National Battlefield and $2,000,000 is for the Millennium Cultural Cooperative Park in Ohio.

DEPARTMENT OF ENERGY

ENERGY CONSERVATION

The conference agreement provides $300,000 for a grant to the Oak Ridge National Laboratory/Nevada Test Site Development Corporation. These funds will be used to develop cooling, refrigeration, and thermal energy management equipment capable of using natural gas or hydrogen fuels, and to improve the reliability of heat-activated cooling, refrigeration, and thermal energy management equipment used in combined heating, cooling, and power applications.

RELATED AGENCY

WOODROW WILSON INTERNATIONAL CENTER FOR SCHOLARS

PAYMENT TO ENDOWMENT FUND

The conference agreement provides $5,000,000 for the endowment fund of the Woodrow Wilson International Center for Scholars.

GENERAL PROVISION—THIS CHAPTER

Section 701 appropriates $30 million to the Indian Health Service, of which $15 million is for Alaska Native alcohol control and sobriety programs and $15 million is for drug and alcohol prevention and treatment for non-Alaska tribes.

CHAPTER 8

GENERAL PROVISIONS—THIS CHAPTER

The conference agreement provides funding to the Health Resources and Services Administration in the Department of Health and Human Services, for the construction of the Christian Nurses Hospice in Brentwood, New York ($400,000).

The conference agreement provides funding to the Institute of Museum and Library Services, for expansion of the marine biology program at the Long Island Maritime Museum ($250,000).

CHAPTER 9

LEGISLATIVE BRANCH

CONGRESSIONAL OPERATIONS

HOUSE OF REPRESENTATIVES

PAYMENTS TO WIDOWS AND HEIRS OF DECREASED MEMBERS OF CONGRESS

The conference agreement includes the traditional death gratuity for the widow of Herbert H. Bateman, late a Representative from the State of Virginia, the widow of Bruce F. Vento, late a Representative from the State of Minnesota, and the widow of Julian C. Dixon, late a Representative from the State of California.

ARCHTECT OF THE CAPITOL

CAPITOL BUILDINGS AND GROUNDS

SALARIES AND EXPENSES

An amount of $1,033,000 is provided to construct an emergency egress stair from the fourth floor of the Capitol. These funds are designated as an emergency requirement.

LIBRARY OF CONGRESS

SALARIES AND EXPENSES

The agreement provides $100,000,000 to the Library of Congress to establish a national digital information infrastructure and preservation program. Of this amount, $25,000,000 is provided immediately and remains available until expended. An additional amount up to $75,000,000 is provided to match dollar-for-dollar any non-federal contributions to this program, including in-kind contributions, that are received before March 31, 2003. The information and technology industry that has created this new medium should be a contributing partner in addressing digital access and preservation issues inherent in the new digital information environment. This program is a major undertaking to develop standards and a nationwide collecting strategy to build a national repository of digital materials.

The Library is directed to develop a phased implementation plan for this program jointly with Federal entities with expertise in

telecommunications technology and electronic commerce policy and with participation of other Federal and non-Federal entities. After consultation with the Joint Committee on the Library, membership of which is changed to include the chair of the Legislative Subcommittee of the Committee on Appropriations of the House of Representatives, the Library shall seek approval of the program plan from the Committee on House Administration, the Committee on Rules and Administration of the Senate, and the Committees on Appropriations of the House of Representatives and the Senate. The Library of Congress is authorized to expend up to $5,000,000, before approval of the plan, for the development of the plan and for collecting or preserving digital information that may otherwise vanish during the plan development and approval cycle.

The overall plan should set forth a strategy for the Library of Congress, in collaboration with other Federal and non-Federal entities, to identify a national network of libraries and other organizations with responsibilities for collecting digital materials that will provide access to and maintain those materials. In addition to developing this strategy, the plan shall set forth, in concert with the Copyright Office, the policies, protocols, and strategies for the long-term preservation of such materials, including the technological infrastructure required at the Library of Congress. In developing the plan, the Library should be mindful of the conclusions drawn in a recent National Academy of Sciences report concerning the Library's trend toward insularity and isolation from its clients and peers in the transition toward digital content.

GENERAL PROVISIONS—THIS CHAPTER

The conference agreement includes a section concerning the Civil Service Retirement System and the Federal Employees Retirement System. Under current law, certain service as an employee of a congressional campaign committee performed before December 12, 1980 is creditable under the Civil Service Retirement System (CSRS), provided that the applicant makes the required employee contributions to the Civil Service Retirement and Disability Fund. The conference report extends the date of eligible service to December 31, 1990 and allows service that began after 1983 to be creditable under the Federal Employees Retirement System (FERS). The provision also permits an employee of a legislative service organization of the House of Representatives to have such service credited under CSRS or FERS (as applicable), upon payment of the required employee contributions to the retirement fund.

The conference agreement amends, at the request of the managers on the part of the Senate, the amount provided for Senate ''miscellaneous items'' in the 2001 Legislative Branch Appropriations Act by striking ''$8,655,000'' and inserting ''$25,155,000''. The managers on the part of the House have receded to the request of the Senate.

The conferees have included a new provision relating to the application of Senate procedure to conference reports.

CHAPTER 10

DEPARTMENT OF DEFENSE—MILITARY CONSTRUCTION

The conferees provide a total of $443,500,000 to the Department of Defense for Planning and Design, Military Construction, and Family Housing. These amounts are provided as follows:

Account/location/facility	*Amount*
Military Construction, Army:	
Planning and Design for Efficient Basing in Europe	$25,000,000
Presido of Monterey: Information Management Computer Center	2,000,000
Military Construction, Air Force: MacDill AFB, Florida: Runway Improvements	12,000,000
Military Construction, Army National Guard:	
Helena, Montana: Fixed Wing Parking Apron	3,000,000
Fort Lewis, Washington: Planning and Design for 66th Aviation Brigade Readiness Center	1,500,000
Total	43,500,000

LAND TRANSFERS

The conferees include two provisions, sections 1002 and 1003 which direct the Department of Interior to transfer, without consideration, parcels of public domain land to the Department of the Army and the Department of the Air Force. Section 1003 transfers land surrounding the Yakima Training Center in Washington to the Department of the Army, and section transfers land located near Cannon AFB in New Mexico to the Department of the Air Force. Both transfers will facilitate military training exercises.

CHAPTER 11

DEPARTMENT OF TRANSPORTATION

GENERAL PROVISIONS—THIS CHAPTER

The conference agreement includes a provision that clarifies that the Dulles corridor project shall include a rail extension from the West Falls Church, Virginia metrorail station to Tysons Corner, Virginia.

The conference agreement includes a provision that amends item 630 of section 1602 of Public Law 105–178 regarding a highway project in Buffalo, New York.

The conference agreement directs the Secretary of Transportation to credit the State of Arkansas with the fair market value of land in Fort Chaffee, Arkansas, incorporated as right of way on the U.S. 71 relocation project, for the state share of the relocation project.

The conference agreement includes an appropriation of $2,500,000 from the airport and airway trust fund for various airport improvements at the Huntsville International Airport in Alabama.

The conference agreement includes an appropriation of $1,000,000 from the mass transit account of the highway trust fund for the Southeast Corridor light rail project in Dallas, Texas.

The conference agreement includes a provision that would designate the Ports-to-Plains corridor within the State of Texas if the Texas Transportation Commission does not designate that corridor within the State of Texas by June 30, 2001. The Federal Highway Administration is expected to submit to the House and Senate Committees on Appropriations, the Senate Environment and Public Works Committee, and the House Transportation and Infrastructure Committee a recommendation for the remaining elements of the Ports-to-Plains corridor by September 30, 2001 should the states of New Mexico, Colorado, Oklahoma and Texas not reach a unified consensus on the designation of the Ports-to-Plains corridor from Dumas, Texas to Denver, Colorado. The Federal Highway Administration's recommendation shall also include the basis for its recommendation.

The conference agreement includes an appropriation of $3,000,000 from the mass transit account of the highway trust fund for the Newark-Elizabeth rail link project in New Jersey.

The conference agreement includes a provision that waives the requirements of section 5309(m)(3)(C) of title 49, United States Code, for the capital investment grants made available in the Department of Transportation and Related Agencies Appropriations Act, 2001 (Public Law 106–346). The provision also makes eligible for highway bridge replacement and rehabilitation program funds in fiscal year 2001 those projects specified in House report 106–940, the conference report accompanying the Department of Transportation and Related Agencies Appropriations Act, 2001 (Public Law 106–346). The provision also amends section 378 of the Department of Transportation and Related Agencies Appropriations Act, 2001 by inserting after ''U.S. 101'' the following: ''and Interstate 5 Trade Corridor''.

The conference agreement includes an appropriation of $4,000,000 from the highway trust fund for commercial remote sensing products and spatial information technologies authorized in section 5113 of Public Law 105–178, as amended.

The conference agreement includes a provision that permits Amtrak to continue leasing vehicles from the General Services Administration's interagency fleet management system in fiscal year 2001 and for each fiscal year thereafter that Amtrak continues to receive a federal operating grant.

The conference agreement includes a provision which clarifies financial and project management authority for a project funded in the Department of Transportation and Related Agencies Appropriations Act, 2001. The agreement requires the Secretary of Transportation to transfer to the City of Oshkosh, Wisconsin the $575,000 previously appropriated for removal of the Fox River Bridge, and to assume no management responsibility for this project.

The conference agreement includes a provision authorizing the Secretary of Transportation to issue a certificate of documentation with endorsement for employment in the coastwise trade for the M/V *Wells Gray* and the *Annandale.*

The conference agreement includes a provision authorizing the Administrator of the General Services Administration to convey Coast Guard property in Middletown, California to Lake County, California.

The conference agreement includes a provision authorizing the Administrator of the General Services Administration or the Commandant of the U.S. Coast Guard to convey to the Town of Nantucket, Massachusetts part of U.S. Coast Guard LORAN Station Nantucket and additional land located in Nantucket.

The conference agreement includes a provision authorizing the Administrator of the General Services Administration or the Commandant of the U.S. Coast Guard to convey to the City of Newburyport, Massachusetts the Plum Island Boat House and the Plum Island Lighthouse, located in Essex County, Massachusetts.

The conference agreement includes a provision authorizing the Administrator of General Services Administration to transfer to the National Oceanic and Atmospheric Administration the property known as Coast Guard Station Scituate in Massachusetts, contingent upon the relocation of Coast Guard Station Scituate to a suitable site.

The conference agreement includes a provision which extends from 2002 to 2004 the Coast Guard's current practice relating to the disposal of dry bulk cargo residue on the Great Lakes; requires a study on the effectiveness of the current practice; and authorizes the promulgation of regulations to regulate incidental discharges of such cargo into the Great Lakes, taking into account the findings of the study required in this section.

The conference agreement includes a provision that amends the appointment process

and qualifications for individuals serving on the Great Lakes Pilotage Advisory Committee.

The conference agreement includes a provision that requires only a vessel of the United States may perform certain specified escort operations and towing assistance, except for a vessel in distress.

The conference agreement includes a provision authorizing the expenditure of $100,000 in fiscal year 2001 funding for Coast Guard environmental compliance and restoration to reimburse the owner of the former Coast Guard lighthouse facility in Cape May, New Jersey for costs incurred for cleanup of lead contaminated soil. The Department of Transportation and Related Agencies Appropriations Act, 2001 included $100,000 for this purpose.

The conference agreement includes an appropriation of $2,400,000 to be derived from the Highway Trust Fund, for the planning, development and construction of rural farm-to-market roads in Tulare County, California. The non-federal share of such improvements shall be 20 percent.

The Department of Transportation is instructed that the grantee for the Nashua, New Hampshire project identified in section 378 of Public Law 106–346 shall be the City of Nashua, New Hampshire.

The conference agreement includes a provision authorizing the Coast Guard to transfer not to exceed $200,000 to the Traverse City Area Public School District for the demolition and removal of Building 402 at former Coast Guard property in Traverse City, Michigan. The provision makes the transfer contingent upon receipt by the Coast Guard of a detailed, fixed price estimate for this work. Funding in the amount of $200,000 was appropriated for this purpose in the Department of Transportation and Related Agencies Appropriations Act, 2001.

The conference agreement includes an appropriation of $500,000 from the mass transit account of the highway trust fund for buses and bus facilities at Alabama A&M University. These funds are to be available until expended.

The conference agreement includes a provision which directs the Federal Transit Administration to distribute $7,047,502 to an urbanized area over 200,000 in population which did not receive fiscal year 1999, 2000 and 2001 fixed guideway modernization funds to which it was lawfully entitled, prior to the formula apportionment of ''Fixed guideway modernization'' funds in fiscal year 2002.

The conference agreement includes a provision that requires that airport improvement program formula changes provided under Public Law 106–181 and defined in section 104 of that Act shall be applied without regard to the overall funding levels for the airport improvement program in fiscal year 2001.

The conference agreement includes a provision that amends item number 473 contained in section 1602 of the Transportation Equity Act for the 21st Century relating to a high priority project in Minnesota.

The conference agreement includes a provision that delays the issuance of the final train horn rule until July 1, 2001. This issue will not be addressed again in subsequent legislation.

The conference agreement provides $8,700,000 for four transportation projects in Texas, Minnesota, Wisconsin, Indiana and Colorado.

CHAPTER 12

GENERAL SERVICES ADMINISTRATION

Real Property Activities

FEDERAL BUILDINGS FUND

The conference agreement includes a new provision providing $2,070,000 for the renovation and redevelopment of portions of the historic Federal building in Terre Haute, Indiana. The conferees direct the General Services Administration to report to the Committees on Appropriations by March 15, 2001 on steps it will take to ensure long-term Federal occupancy of this building.

DEPARTMENT OF THE TREASURY

United States Customs Service

OPERATIONS, MAINTENANCE AND PROCUREMENT, AIR AND MARINE INTERDICTION PROGRAMS

The conference agreement includes $7,000,000 for necessary expenses related to the procurement of two aircraft and related equipment expenses at the Customs National Aviation Center in Oklahoma City, Oklahoma. The conference agreement provides that none of the funds shall be available for obligation until an expenditure plan is submitted for approval to the Committees on Appropriations.

UNITED STATES POSTAL SERVICE

TINTON FALLS, NEW JERSEY

The conferees are aware that the Postal Service has identified Tinton Falls, New Jersey as a town to receive a new postal facility, but are concerned that this need for a new postal facility is not being addressed in a timely manner. The conferees urge the Postal Service to give this project a high priority in its capital facility plan for the next fiscal year.

CHAPTER 13

DEPARTMENT OF VETERANS AFFAIRS

Departmental Administration

CONSTRUCTION, MINOR PROJECTS

The conferees have included $8,840,000 for Construction, minor projects. Of this amount, $8,440,000 is recommended for projects related to the integration of facilities at the Boston VA Medical Center. These funds are to supplement amounts previously provided for minor construction projects in fiscal year 2001 in Veterans Integrated Service Network 1.

In addition, the conferees recommend $400,000 to be used towards construction costs of a cover for the Riverside National Cemetery amphitheater.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development

EMPOWERMENT ZONES/ENTERPRISE COMMUNITIES

Provides an additional $110,000,000 for urban empowerment zones, as authorized by the Taxpayer Relief Act of 1997.

COMMUNITY DEVELOPMENT FUND

Language is included which makes a technical amendment to an economic development initiative grant provided in Public Law 106–377.

Language is included which transfers unobligated grant funds from a specific city to a county in order to carry out the purposes for which the grant was made.

The conferees have amended Public Law 106–377 to provide an additional $66,128,000 for targeted Economic Development Initiative grants under the terms and conditions as provided in Public Law 106–377, as follows:

—$425,000 for Project Home, Allied-Dunn's Marsh Neighborhood Center and Prairie Crossing low income housing rehabilitation project in Wisconsin;

—$1,000,000 for F.E.A.T. for the establishment of the Merle Travis Park in Muhlenberg County, Kentucky;

—$750,000 for the Washington County Commission for the World Wildlife Educational Museum addition to the Dixie Chapter in St. George, Utah;

—$250,000 for the Henry Ford Museum—Greefield Village in Dearborn, Michigan for expenses related to the design, planning and construction of the ''Great American Road Exhibit'';

—$6,000,000 for Shepherd College in Shepherdstown, West Virginia for construction, related activities, and programs at the Scarborough Library;

—$633,000 for the State of Nevada to establish a state-wide computer database of utilities and infrastructure needs for rural communities and Indian reservations;

—$850,000 for the University of South Carolina for the operation of an historical archive at the University of South Carolina, Department of Archives, South Carolina;

—$500,000 for the Idaho City Parks and Recreation Commission for the Idaho City Mien Tailings Site Restoration Project and Park in Idaho City, Idaho;

—$250,000 for the Swiss Center of North America, New Glarus, Wisconsin;

—$750,000 for the City of Madison, Wisconsin for the Troy Housing and Gardens Development;

—$750,000 for the City of New Loft, Wisconsin for acquisition and restoration of a teen facility;

—$2,000,000 for the City of Pasadena, Texas for a Police Academy driver training track;

—$1,300,000 for the City of Baytown, Texas for its Emergency Operations Center;

—$750,000 for the City of Las Vegas, Nevada for downtown development initiatives;

—$800,000 to support the Innovative Brownfields Site Assessment and Remediation Technology Demonstration at the Defense Fuel Support Point, in Lynn Haven, Florida;

—$200,000 for the Tri-County Agricultural Complex in Calhoun, Gulf, and Liberty Counties, Florida

—$100,000 for the CCTV Central Coast partnership (California) to promote environmentally friendly, sustainable agriculture practices;

—$600,000 for the Central California Coast Research Partnership;

—$500,000 for the Santa Barbara County, California Water Agency for costs associated with emergency sediment removal in the Twitchell Reservoir;

—$500,000 for the City of Paso Robles, California for the Oak Parks Housing Project for modernization and rehabilitation projects;

—$100,000 for the Cambridge, Massachusetts Redevelopment Authority public spaces initiative;

—$1,000,000 for the Sidney R. Yates and Addie Yates Exhibition Center at the Field Museum in Chicago, Illinois;

—$750,000 for the Greater Dwight Development Corporation in New Haven, Connecticut for its child care center and offices;

—$500,000 for methamphetamine site cleanup activities of the Fresno, California Sheriff's Department;

—$3,000,000 to the Cross Valley Rail Corridor Joint Powers Authority, California for rehabilitation of the San Joaquin Railroad;

—$1,000,000 to the City of Monterrey, California to upgrade 911 emergency response services;

—$2,035,000 for Eastern Connecticut University for upgrade of its technology systems;

—$500,000 for the City of Vernon, Connecticut for brownfields remediation activities;

—$1,000,000 for the Mystic Seaport Maritime Education and Research Center in Mystic, Connecticut;

—$2,700,000 for the Southeastern Pennsylvania Consortium on Higher Education for a collaborative Math and Science Institute;

—$900,000 for the Town of Towamencin, Pennsylvania for its urban park and recreation recovery project;

—$1,400,000 for Temple University, Pennsylvania for its Center for a Sustainable Environment;

—$600,000 for the Township of Plainsboro, New Jersey for its Nature and Education Center;

—$300,000 for the Saint Mary's County, Maryland River Project;

—$450,000 for the Truitt Laboratory of the Chesapeake Biological Laboratory for the Bayscapes Habitat Reconstruction Project, Maryland;

—$800,000 for the Edmonds Community College Foundation, Washington for a Center on Families;

—$400,000 for the Access Community Health Network in Chicago, Illinois;

—$500,000 for the City of Seymour, Connecticut Police Department for upgrades of law enforcement technology;

—$2,500,000 for the Town of Beacon Falls, Connecticut for the Pinebridge Industrial Park;

—$150,000 for the City of Sacramento, California for the Emerging Technology Institute;

—$200,000 for the Kansas City, Kansas foresics crime laboratory;

—$700,000 for the Kansas City, Kansas Humane Society for expenses associated with relocation of its facilities;

—$350,000 for the expansion of the Dunbar Community Center in Springfield, Massachusetts;

—$500,000 to the West Virginia High Technology Consortium Foundation, Inc. for high priority economic development initiatives including land acquisition;

—$1,000,000 for the Medford Area School District, Wisconsin for after-school programs;

—$300,000 for the North Central Wisconsin Workforce Development Board for education, training, counseling, emergency assistance and related services for displaced workers and their families in central Wisconsin;

—$250,000 for the Portage County, Wisconsin Business Council Foundation in Stevens Point for activities including construction and training related to a business education and training center and a regional training clearinghouse;

—$200,000 for the Development Association of Superior/Douglas Counties, Wisconsin for a microenterprise loan and technical assistance fund;

—$500,000 for the Chippewa County Economic Corporation in Wisconsin for construction of a workforce development center;

—$365,000 for the City of Wausau, Wisconsin for brownfields remediation in Marathon County;

—$1,000,000 for the Unity School District, Balsam Lake, Wisconsin for after-school activities;

—$100,000 for the Marathon County, Wisconsin Sheriff's Department for Central Wisconsin drug prevention initiatives;

—$500,000 for the Santa Ana, California Police Department crime analysis unit;

—$1,300,000 for the City of Jackson, Mississippi for its brownfields clean-up activities;

—$500,000 for Essex County, Massachusetts for its wastewater and combined sewer overflow program;

—$500,000 for Pacific Union College, California for the Napa Valley Resource in Napa County, California

—$400,000 for the establishment of the Wolfe Center for teen substance abuse in Napa County, California;

—$500,000 for Dyer, Indiana for a water diversion project;

—$500,000 for the Community and Family Resource Center renovation project in Newberg, Oregon;

—$2,000,000 for the George Meany Center for Labor Studies in Silver Spring, Maryland;

—$1,000,000 for the Rhode Island State Police for technology upgrade initiatives;

—$2,000,000 for the War Memorial Museum in Milwaukee, Wisconsin;

—$500,000 for the Mott Community College Workforce Development Institute in Michigan;

—$1,000,000 for Maricopa County Community College for the Achieving a College Education Initiative (ACE) in Arizona;

—$1,000,000 to Coffee County, Tennessee for the Coffee County Industrial Park;

—$1,500,000 to the Tennessee Fire Services and Codes Enforcement Academy in Bedford County, Tennessee;

—$600,000 to the 21st Century Council of Lawrence for the Lawrence County Industrial Park in Tennessee;

—$350,000 to the Fayetteville-Lincoln County Library Board in Tennessee for the Lincoln County Library;

—$150,000 to the University of Tennessee Center for Business and Economic Research to study the economic impact of alternative management policies of TVA-managed lakes in rural East Tennessee;

—$2,500,000 to Winston-Salem University in Winston-Salem, North Carolina for the reconstruction of St. Phillips Church ($2,000,000) and Atkins House ($500,000);

—$1,575,000 to Escambia County in Florida for development costs for infrastructure of Central Commerce Park;

—$1,000,000 to Ashland University in Ashland, Ohio for rehabilitation and expansion of the Kettering Science Center;

—$640,000 to Waukegan, Illinois for renovation of the historic Genesee Theater;

—$1,155,000 to the Tampa Housing Authority in Tampa, Florida for costs associated with the Tom Dyer Elderly Housing Redevelopment Project.

DEPARTMENT OF THE TREASURY

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS

COMMUNITY DEVELOPMENT FINANCIAL INSTITUTIONS FUND PROGRAM ACCOUNT

Increases the cap on administrative expenses by $1,000,000, in order to accommodate increased responsibilities assigned to the Fund by the New Markets Initiative. The conferees direct the CDFI Fund to submit a report to the Committees on Appropriations within 60 days of enactment describing plans for carrying out these responsibilities, including staffing and resource requirements. The conferees would consider supplemental appropriations for this purpose if CDFI demonstrates that additional funds are needed.

ENVIRONMENTAL PROTECTION AGENCY

SCIENCE AND TECHNOLOGY

Language is included which provides $1,000,000 in additional appropriations for the continuation of the South Bronx Air Pollution Study being conducted by New York University.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

Language is included which makes a technical correction to a grant provided to the San Bernardino Valley Municipal Water District in Public Law 106–377.

STATE AND TRIBAL ASSISTANCE GRANTS

Language is included which clarifies that funds appropriated for infrastructure needs in the New York City watershed shall be awarded under section 1443(d) of the Safe Drinking Water Act, as amended.

Language is included which makes funds appropriated in Public Law 106–377 for a specific project in Indiana available for an alternative project.

The conferees have amended Public Law 106–377 to include an additional $20,630,000 to communities or other entities for construction of water and wastewater treatment facilities. Cost share requirements and all other terms and conditions provided in Public Law 106–377 for these grants shall also apply to these grants, distributed as follows:

1. $1,000,000 for combined sewer overflow infrastructure improvements on the Connecticut River.

2. $7,280,000 to Grand Rapids, Michigan for combined sewer overflow infrastructure improvements.

3. $3,000,000 for water delivery system infrastructure improvements for the cities of Arcadia and Sierra Madre, California.

4. $7,850,000 for wastewater facility, drinking water, and water system delivery infrastructure improvements in Milton Township ($5,000,000), the Village of McDonald ($350,000), and the Village of Wellsville ($2,500,000), Ohio.

5. $1,000,000 for wastewater treatment infrastructure improvements in Carmel, Indiana.

FEDERAL EMERGENCY MANAGEMENT AGENCY

EMERGENCY MANAGEMENT PLANNING AND ASSISTANCE

Language is included which provides $100,000,000 for new fire fighting programs as authorized by the Federal Fire Prevention and Control Act, as amended.

CHAPTER 14

GENERAL PROVISIONS—THIS CHAPTER

The conference agreement includes the adoption of H. Con. Res. 234 by the Senate.

The conference agreement includes a new provision relating to the application of the Federal Reports Elimination and Sunset Act of 1995 to certain reports.

The conferees direct the Comptroller General of the United States to (1) ascertain the ownership of the West Campus Buildings of the Saint Elizabeth's Hospital complex in the District of Columbia; (2) review and comment on existing cost estimates for mothballing/stabilization, phase II environmental mediation, phase II archaeological study, environmental impact study, and land use study; (3) report on any existing historic designations and corresponding responsibilities; and (4) identify action required to facilitate transfer of the property. The conferees request that the report be completed and submitted to the House and Senate Committees on Appropriations within 45 days of the enactment of this Act.

The conference agreement includes a new provisions rescinding 0.22 percent of the discretionary budget authority provided (or obligation limit imposed) for fiscal year 2001, except for those programs, projects, and activities which are specifically exempted. The provision exempts from rescission the Military Personnel accounts of the of the Department of Defense Appropriations Act, 2001, and fiscal year 2001 amounts for activities funded in the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act.

DIVISION B

TITLE I

The conference agreement includes a section that provides greater availability of food assistance in day care centers by modifying eligibility criteria in the Child and Adult Care Food Program.

The conference agreement includes a section to authorize a pilot program through the Summer Food Service Program to examine whether reducing burdensome paperwork would increase the availability of food assistance for children during the summer who, during the school year, have access to meals through the School Lunch Program.

The conference agreement includes language which authorizes the Secretary of the

Interior to conduct a feasibility study for a Sacramento River, California, diversion project.

The conference agreement includes language which modifies the authorization for the Saint Francis River Basin, Missouri and Arkansas, project to expand the boundaries of the project to include Ten- and Fifteen-Mile Bayous near West Memphis, Arkansas.

The conference agreement includes language which authorizes the Secretary of the Army to enter into an agreement to permit the City of Alton, Illinois, to construct recreational facilities at the Melvin Price Lock and Dam.

The conference agreement includes language which authorizes the Secretary of the Interior, in cooperation with Washoe County, Nevada, to participate in the planning, design, and construction of the Truckee Watershed Reclamation Project.

The conference agreement includes language which authorizes the Secretary of the Army to widen and deepen the Alafia Channel in Tampa Harbor, Florida.

The conference agreement includes language which authorizes a number of environmental infrastructure projects.

The conference agreement includes language which authorizes the Secretary of the Army to provide technical and financial assistance to carry out projects to improve the water quality in the Florida Keys National Marine Sanctuary.

The conference agreement includes language to provide for the restoration of the San Gabriel Basin in California.

The conference agreement includes language which authorizes the Secretary of the Army to participate in studies and the planning and design of projects which offer a long-term solution to the problem of groundwater pollution caused by perchlorates.

The conference agreement includes language which authorizes the construction of fish passage facilities at the New Savannah Bluff Lock and Dam in Georgia and South Carolina.

The conference agreement includes language which provides for the extinguishment of reversionary interests and use restrictions at the Port of Umatilla, Oregon.

The conference agreement includes language which repeals section 101(b)(6) of the Water Resources Development Act of 2000.

The conference agreement includes language which directs the Secretary of the Army to reimburse the East Bay Municipal Water District for the Federal share of costs incurred by the district for the Penn Mine, Calaveras County, California, aquatic ecosystem restoration project.

The conference agreement includes language which authorizes the Secretary of the Army to construct intake facilities at Greer Ferry Lake, Arkansas, for the benefit of Lonoke and White Counties in Arkansas.

The conference agreement includes language which authorizes the Secretary of the Army to provide the non-Federal sponsor of the Chehalis River and Tributaries, Washington, project credit toward the non-Federal share of the cost of the project for work carried out by the non-Federal sponsor before the date of enactment of a project cooperation agreement.

Section 119 includes a technical correction to permit the National Park Service to issue a grant to the city of Ocean Beach, New York.

Section 120 directs the National Park Service to work with Fort Sumter Tours, Inc., the concessionaire at Fort Sumter National Monument in South Carolina, on an amicable solution to the current legal dispute. In addition, the Director shall immediately extend the current contract through March 15, 2001, and for 180 days if the final settlement is agreed to by both parties.

Section 121 amends title VIII of the Department of the Interior and Related Agencies Appropriations Act, 2001 to derive funding under that title from the Land and Water Conservation Fund. This reference was inadvertently omitted from the original legislation.

Section 122 amends the Energy Policy Act of 1992 to include a reference to liquid fuels domestically produced from natural gas.

Section 123 incorporates by reference the text of the bill H.R. 4904, as passed by the House of Representatives on September 26, 2000, expressing the policy of the United States regarding the U.S. relationship with Native Hawaiians. The text of H.R. 4904 is as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. FINDINGS.

Congress makes the following findings:

(1) The Constitution vests Congress with the authority to address the conditions of the indigenous, native people of the United States.

(2) Native Hawaiians, the native people of the Hawaiian archipelago which is now part of the United States, are indigenous, native people of the United States.

(3) The United States has a special trust relationship to promote the welfare of the native people of the United States, including Native Hawaiians.

(4) Under the treaty making power of the United States, Congress exercised its constitutional authority to confirm a treaty between the United States and the government that represented the Hawaiian people, and from 1826 until 1893, the United States recognized the independence of the Kingdom of Hawaii, extended full diplomatic recognition to the Hawaiian government, and entered into treaties and conventions with the Hawaiian monarchs to govern commerce and navigation in 1826, 1842, 1849, 1875, and 1887.

(5) Pursuant to the provisions of the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42), the United States set aside 203,500 acres of land in the Federal territory that later became the State of Hawaii to address the conditions of Native Hawaiians.

(6) By setting aside 203,500 acres of land for Native Hawaiian homesteads and farms, the Act assists the Native Hawaiian community in maintaining distinct native settlements throughout the State of Hawaii.

(7) Approximately 6,800 Native Hawaiian lessees and their family members reside on Hawaiian Home Lands and approximately 18,000 Native Hawaiians who are eligible to reside on the Home Lands are on a waiting list to receive assignments of land.

(8) In 1959, as part of the compact admitting Hawaii into the United States, Congress established the Ceded Lands Trust for five purposes, one of which is the betterment of the conditions of Native Hawaiians. Such trust consists of approximately 1,800,000 acres of land, submerged lands, and the revenues derived from such lands, the assets of which have never been completely inventoried or segregated.

(9) Throughout the years, Native Hawaiians have repeatedly sought access to the Ceded Lands Trust and its resources and revenues in order to establish and maintain native settlements and distinct native communities throughout the State.

(10) The Hawaiian Home Lands and the Ceded Lands provide an important foundation for the ability of the Native Hawaiian community to maintain the practice of Native Hawaiian culture, language, and traditions, and for the survival of the Native Hawaiian people.

(11) Native Hawaiians have maintained other distinctly native areas in Hawaii.

(12) On November 23, 1993, Public Law 103–150 (107 Stat. 1510) (commonly known as the Apology Resolution) was enacted into law, extending an apology on behalf of the United States to the Native people of Hawaii for the United States role in the overthrow of the Kingdom of Hawaii.

(13) The Apology Resolution acknowledges that the overthrow of the Kingdom of Hawaii occurred with the active participation of agents and citizens of the United States and further acknowledges that the Native Hawaiian people never directly relinquished their claims to their inherent sovereignty as a people over their national lands to the United States, either through their monarchy or through a plebiscite or referendum.

(14) The Apology Resolution expresses the commitment of Congress and the President to acknowledge the ramifications of the overthrow of the Kingdom of Hawaii and to support reconciliation efforts between the United States and Native Hawaiians; and to have Congress and the President, through the President's designated officials, consult with Native Hawaiians on the reconciliation process as called for under the Apology Resolution.

(15) Despite the overthrow of the Hawaiian government, Native Hawaiians have continued to maintain their separate identity as a distinct native community through the formation of cultural, social, and political institutions, and to give expression to their rights as native people to self-determination and self-governance as evidenced through their participation in the Office of Hawaiian Affairs.

(16) Native Hawaiians also maintain a distinct Native Hawaiian community through the provision of governmental services to Native Hawaiians, including the provision of health care services, educational programs, employment and training programs, children's services, conservation programs, fish and wildlife protection, agricultural programs, native language immersion programs and native language immersion schools from kindergarten through high school, as well as college and master's degree programs in native language immersion instruction, and traditional justice programs, and by continuing their efforts to enhance Native Hawaiian self-determination and local control.

(17) Native Hawaiians are actively engaged in Native Hawaiian cultural practices, traditional agricultural methods, fishing and subsistence practices, maintenance of cultural use areas and sacred sites, protection of burial sites, and the exercise of their traditional rights to gather medicinal plants and herbs, and food sources.

(18) The Native Hawaiian people wish to preserve, develop, and transmit to future Native Hawaiian generations their ancestral lands and Native Hawaiian political and cultural identity in accordance with their traditions, beliefs, customs and practices, language, and social and political institutions, and to achieve greater self-determination over their own affairs.

(19) This Act provides for a process within the framework of Federal law for the Native Hawaiian people to exercise their inherent rights as a distinct aboriginal, indigenous, native community to reorganize a Native Hawaiian government for the purpose of giving expression to their rights as native people to self-determination and self-governance.

(20) The United States has declared that—

(A) the United States has a special responsibility for the welfare of the native peoples of the United States, including Native Hawaiians;

(B) Congress has identified Native Hawaiians as a distinct indigenous group within the scope of its Indian affairs power, and has enacted dozens of statutes on their behalf pursuant to its recognized trust responsibility; and

(C) Congress has also delegated broad authority to administer a portion of the Federal trust responsibility to the State of Hawaii.

(21) The United States has recognized and reaffirmed the special trust relationship with the Native Hawaiian people through—

(A) the enactment of the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (Public Law 86–3; 73 Stat. 4) by—

(i) ceding to the State of Hawaii title to the public lands formerly held by the United States, and mandating that those lands be held in public trust for five purposes, one of which is for the betterment of the conditions of Native Hawaiians; and

(ii) transferring the United States responsibility for the administration of the Hawaiian Home Lands to the State of Hawaii, but retaining the authority to enforce the trust, including the exclusive right of the United States to consent to any actions affecting the lands which comprise the corpus of the trust and any amendments to the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42) that are enacted by the legislature of the State of Hawaii affecting the beneficiaries under the Act.

(22) The United States continually has recognized and reaffirmed that—

(A) Native Hawaiians have a cultural, historic, and land-based link to the aboriginal, native people who exercised sovereignty over the Hawaiian Islands;

(B) Native Hawaiians have never relinquished their claims to sovereignty or their sovereign lands;

(C) the United States extends services to Native Hawaiians because of their unique status as the aboriginal, native people of a once sovereign nation with whom the United States has a political and legal relationship; and

(D) the special trust relationship of American Indians, Alaska Natives, and Native Hawaiians to the United States arises out of their status as aboriginal, indigenous, native people of the United States.

SEC. 2. DEFINITIONS.

In this Act:

(1) ABORIGINAL, INDIGENOUS, NATIVE PEOPLE.—The term ''aboriginal, indigenous, native people'' means those people whom Congress has recognized as the original inhabitants of the lands and who exercised sovereignty prior to European contact in the areas that later became part of the United States.

(2) ADULT MEMBERS.—The term ''adult members'' means those Native Hawaiians who have attained the age of 18 at the time the Secretary publishes the final roll, as provided in section 7(a)(3) of this Act.

(3) APOLOGY RESOLUTION.—The term ''Apology Resolution'' means Public Law 103–150 (107 Stat. 1510), a joint resolution offering an apology to Native Hawaiians on behalf of the United States for the participation of agents of the United States in the January 17, 1893 overthrow of the Kingdom of Hawaii.

(4) CEDED LANDS.—The term ''ceded lands'' means those lands which were ceded to the United States by the Republic of Hawaii under the Joint Resolution to provide for annexing the Hawaiian Islands to the United States of July 7, 1898 (30 Stat. 750), and which were later transferred to the State of Hawaii in the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'' approved March 18, 1959 (Public Law 86–3; 73 Stat. 4).

(5) COMMISSION.—The term ''Commission'' means the commission established in section 7 of this Act to certify that the adult members of the Native Hawaiian community contained on the roll developed under that section meet the definition of Native Hawaiian, as defined in paragraph (7)(A).

(6) INDIGENOUS, NATIVE PEOPLE.—The term ''indigenous, native people'' means the lineal descendants of the aboriginal, indigenous, native people of the United States.

(7) NATIVE HAWAIIAN.—

(A) Prior to the recognition by the United States of a Native Hawaiian government under the authority of section 7(d)(2) of this Act, the term ''Native Hawaiian'' means the indigenous, native people of Hawaii who are the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago, including the area that now constitutes the State of Hawaii, and includes all Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) and their lineal descendants.

(B) Following the recognition by the United States of the Native Hawaiian government under section 7(d)(2) of this Act, the term ''Native Hawaiian'' shall have the meaning given to such term in the organic governing documents of the Native Hawaiian government.

(8) NATIVE HAWAIIAN GOVERNMENT.—The term ''Native Hawaiian government'' means the citizens of the government of the Native Hawaiian people that is recognized by the United States under the authority of section 7(d)(2) of this Act.

(9) NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL.—The term ''Native Hawaiian Interim Governing Council'' means the interim governing council that is organized under section 7(c) of this Act.

(10) ROLL.—The term ''roll'' means the roll that is developed under the authority of section 7(a) of this Act.

(11) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(12) TASK FORCE.—The term ''Task Force'' means the Native Hawaiian Interagency Task Force established under the authority of section 6 of this Act.

SEC. 3. UNITED STATES POLICY AND PURPOSE.

(a) POLICY.—The United States reaffirms that—

(1) Native Hawaiians are a unique and distinct aboriginal, indigenous, native people, with whom the United States has a political and legal relationship;

(2) the United States has a special trust relationship to promote the welfare of Native Hawaiians;

(3) Congress possesses the authority under the Constitution to enact legislation to address the conditions of Native Hawaiians and has exercised this authority through the enactment of—

(A) the Hawaiian Homes Commission Act, 1920 (42 Stat. 108, chapter 42);

(B) the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'', approved March 18, 1959 (Public Law 86–3; 73 Stat. 4); and

(C) more than 150 other Federal laws addressing the conditions of Native Hawaiians;

(4) Native Hawaiians have—

(A) an inherent right to autonomy in their internal affairs;

(B) an inherent right of self-determination and self-governance;

(C) the right to reorganize a Native Hawaiian government; and

(D) the right to become economically self-sufficient; and

(5) the United States shall continue to engage in a process of reconciliation and political relations with the Native Hawaiian people.

(b) PURPOSE.—It is the intent of Congress that the purpose of this Act is to provide a process for the reorganization of a Native Hawaiian government and for the recognition by the United States of the Native Hawaiian government for purposes of continuing a government-to-government relationship.

SEC. 4. ESTABLISHMENT OF THE UNITED STATES OFFICE FOR NATIVE HAWAIIAN AFFAIRS.

(a) IN GENERAL.—There is established within the Office of the Secretary the United States Office for Native Hawaiian Affairs.

(b) DUTIES OF THE OFFICE.—The United States Office for Native Hawaiian Affairs shall—

(1) effectuate and coordinate the special trust relationship between the Native Hawaiian people and the United States through the Secretary, and with all other Federal agencies;

(2) upon the recognition of the Native Hawaiian government by the United States as provided for in section 7(d)(2) of this Act, effectuate and coordinate the special trust relationship between the Native Hawaiian government and the United States through the Secretary, and with all other Federal agencies;

(3) fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian people by providing timely notice to, and consulting with the Native Hawaiian people prior to taking any actions that may affect traditional or current Native Hawaiian practices and matters that may have the potential to significantly or uniquely affect Native Hawaiian resources, rights, or lands, and upon the recognition of the Native Hawaiian government as provided for in section 7(d)(2) of this Act, fully integrate the principle and practice of meaningful, regular, and appropriate consultation with the Native Hawaiian government by providing timely notice to, and consulting with the Native Hawaiian people and the Native Hawaiian government prior to taking any actions that may have the potential to significantly affect Native Hawaiian resources, rights, or lands;

(4) consult with the Native Hawaiian Interagency Task Force, other Federal agencies, and with relevant agencies of the State of Hawaii on policies, practices, and proposed actions affecting Native Hawaiian resources, rights, or lands;

(5) be responsible for the preparation and submittal to the Committee on Indian Affairs of the Senate, the Committee on Energy and Natural Resources of the Senate, and the Committee on Resources of the House of Representatives of an annual report detailing the activities of the Interagency Task Force established under section 6 of this Act that are undertaken with respect to the continuing process of reconciliation and to effect meaningful consultation with the Native Hawaiian people and the Native Hawaiian government and providing recommendations for any necessary changes to existing Federal statutes or regulations promulgated under the authority of Federal law;

(6) be responsible for continuing the process of reconciliation with the Native Hawaiian people, and upon the recognition of the Native Hawaiian government by the United States as provided for in section 7(d)(2) of this Act, be responsible for continuing the process of reconciliation with the Native Hawaiian government; and

(7) assist the Native Hawaiian people in facilitating a process for self-determination, including but not limited to the provision of technical assistance in the development of the roll under section 7(a) of this Act, the organization of the Native Hawaiian Interim Governing Council as provided for in section 7(c) of this Act, and the recognition of the Native Hawaiian government as provided for in section 7(d) of this Act.

(c) AUTHORITY.—The United States Office for Native Hawaiian Affairs is authorized to enter into a contract with or make grants for the purposes of the activities authorized or addressed in section 7 of this Act for a period of 3 years from the date of the enactment of this Act.

SEC. 5. DESIGNATION OF DEPARTMENT OF JUSTICE REPRESENTATIVE.

The Attorney General shall designate an appropriate official within the Department of Justice to assist the United States Office for Native Hawaiian Affairs in the implementation and protection of the rights of Native Hawaiians and their political, legal, and trust relationship with the United States, and upon the recognition of the Native Hawaiian government as provided for in section 7(d)(2) of this Act, in the implementation and protection of the rights of the Native Hawaiian government and its political, legal, and trust relationship with the United States.

SEC. 6. NATIVE HAWAIIAN INTERAGENCY TASK FORCE.

(a) ESTABLISHMENT.—There is established an interagency task force to be known as the ''Native Hawaiian Interagency Task Force''.

(b) COMPOSITION.—The Task Force shall be composed of officials, to be designated by the President, from—

(1) each Federal agency that establishes or implements policies that affect Native Hawaiians or whose actions may significantly or uniquely impact on Native Hawaiian resources, rights, or lands;

(2) the United States Office for Native Hawaiian Affairs established under section 4 of this Act; and

(3) the Executive Office of the President.

(c) LEAD AGENCIES.—The Department of the Interior and the Department of Justice shall serve as the lead agencies of the Task Force, and meetings of the Task Force shall be convened at the request of either of the lead agencies.

(d) CO-CHAIRS.—The Task Force representative of the United States Office for Native Hawaiian Affairs established under the authority of section 4 of this Act and the Attorney General's designee under the authority of section 5 of this Act shall serve as co-chairs of the Task Force.

(e) DUTIES.—The responsibilities of the Task Force shall be—

(1) the coordination of Federal policies that affect Native Hawaiians or actions by any agency or agencies of the Federal Government which may significantly or uniquely impact on Native Hawaiian resources, rights, or lands;

(2) to assure that each Federal agency develops a policy on consultation with the Native Hawaiian people, and upon recognition of the Native Hawaiian government by the United States as provided in section 7(d)(2) of this Act, consultation with the Native Hawaiian government; and

(3) to assure the participation of each Federal agency in the development of the report to Congress authorized in section 4(b)(5) of this Act.

SEC. 7. PROCESS FOR THE DEVELOPMENT OF A ROLL FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL, FOR THE ORGANIZATION OF A NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL AND A NATIVE HAWAIIAN GOVERNMENT, AND FOR THE RECOGNITION OF THE NATIVE HAWAIIAN GOVERNMENT.

(a) ROLL.—

(1) PREPARATION OF ROLL.—The United States Office for Native Hawaiian Affairs shall assist the adult members of the Native Hawaiian community who wish to participate in the reorganization of a Native Hawaiian government in preparing a roll for the purpose of the organization of a Native Hawaiian Interim Governing Council. The roll shall include the names of the—

(A) adult members of the Native Hawaiian community who wish to become citizens of a Native Hawaiian government and who are—

(i) the lineal descendants of the aboriginal, indigenous, native people who resided in the islands that now comprise the State of Hawaii on or before January 1, 1893, and who occupied and exercised sovereignty in the Hawaiian archipelago; or

(ii) Native Hawaiians who were eligible in 1921 for the programs authorized by the Hawaiian Homes Commission Act (42 Stat. 108, chapter 42) or their lineal descendants; and

(B) the children of the adult members listed on the roll prepared under this subsection.

(2) CERTIFICATION AND SUBMISSION.—

(A) COMMISSION.—

(i) IN GENERAL.—There is authorized to be established a Commission to be composed of nine members for the purpose of certifying that the adult members of the Native Hawaiian community on the roll meet the definition of Native Hawaiian, as defined in section 2(7)(A) of this Act.

(ii) MEMBERSHIP.—

(I) APPOINTMENT.—The Secretary shall appoint the members of the Commission in accordance with subclause (II). Any vacancy on the Commission shall not affect its powers and shall be filled in the same manner as the original appointment.

(II) REQUIREMENTS.—The members of the Commission shall be Native Hawaiian, as defined in section 2(7)(A) of this Act, and shall have expertise in the certification of Native Hawaiian ancestry.

(III) CONGRESSIONAL SUBMISSION OF SUGGESTED CANDIDATES.—In appointing members of the Commission, the Secretary may choose such members from among—

(aa) five suggested candidates submitted by the Majority Leader of the Senate and the Minority Leader of the Senate from a list of candidates provided to such leaders by the Chairman and Vice Chairman of the Committee on Indian Affairs of the Senate; and

(bb) four suggested candidates submitted by the Speaker of the House of Representatives and the Minority Leader of the House of Representatives from a list provided to the Speaker and the Minority Leader by the Chairman and Ranking member of the Committee on Resources of the House of Representatives.

(iii) EXPENSES.—Each member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for employees of agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(B) CERTIFICATION.—The Commission shall certify that the individuals listed on the roll developed under the authority of this subsection are Native Hawaiians, as defined in section 2(7)(A) of this Act.

(3) SECRETARY.—

(A) CERTIFICATION.—The Secretary shall review the Commission's certification of the membership roll and determine whether it is consistent with applicable Federal law, including the special trust relationship between the United States and the indigenous, native people of the United States.

(B) PUBLICATION.—Upon making the determination authorized in subparagraph (A), the Secretary shall publish a final roll.

(C) APPEAL.—

(i) ESTABLISHMENT OF MECHANISM.—The Secretary is authorized to establish a mechanism for an appeal of the Commission's determination as it concerns—

(I) the exclusion of the name of a person who meets the definition of Native Hawaiian, as defined in section 2(7)(A) of this Act, from the roll; or

(II) a challenge to the inclusion of the name of a person on the roll on the grounds that the person does not meet the definition of Native Hawaiian, as so defined.

(ii) PUBLICATION; UPDATE.—The Secretary shall publish the final roll while appeals are pending, and shall update the final roll and the publication of the final roll upon the final disposition of any appeal.

(D) FAILURE TO ACT.—If the Secretary fails to make the certification authorized in subparagraph (A) within 90 days of the date that the Commission submits the membership roll to the Secretary, the certification shall be deemed to have been made, and the Commission shall publish the final roll.

(4) EFFECT OF PUBLICATION.—The publication of the final roll shall serve as the basis for the eligibility of adult members listed on the roll to participate in all referenda and elections associated with the organization of a Native Hawaiian Interim Governing Council and the Native Hawaiian government.

(b) RECOGNITION OF RIGHTS.—The right of the Native Hawaiian people to organize for their common welfare and to adopt appropriate organic governing documents is hereby recognized by the United States.

(c) ORGANIZATION OF THE NATIVE HAWAIIAN INTERIM GOVERNING COUNCIL.—

(1) ORGANIZATION.—The adult members listed on the roll developed under the authority of subsection (a) are authorized to—

(A) develop criteria for candidates to be elected to serve on the Native Hawaiian Interim Governing Council;

(B) determine the structure of the Native Hawaiian Interim Governing Council; and

(C) elect members to the Native Hawaiian Interim Governing Council.

(2) ELECTION.—Upon the request of the adult members listed on the roll developed under the authority of subsection (a), the United States Office for Native Hawaiian Affairs may assist the Native Hawaiian community in holding an election by secret ballot (absentee and mail balloting permitted), to elect the membership of the Native Hawaiian Interim Governing Council.

(3) POWERS.—

(A) IN GENERAL.—The Native Hawaiian Interim Governing Council is authorized to represent those on the roll in the implementation of this Act and shall have no powers other than those given to it in accordance with this Act.

(B) FUNDING.—The Native Hawaiian Interim Governing Council is authorized to enter into a contract or grant with any Federal agency, including but not limited to, the United States Office for Native Hawaiian Affairs within the Department of the Interior and the Administration for Native Americans within the Department of Health and Human Services, to carry out the activities set forth in subparagraph (C).

(C) ACTIVITIES.—

(i) IN GENERAL.—The Native Hawaiian Interim Governing Council is authorized to conduct a referendum of the adult members listed on the roll developed under the authority of subsection (a) for the purpose of determining (but not limited to) the following:

(I) The proposed elements of the organic governing documents of a Native Hawaiian government.

(II) The proposed powers and authorities to be exercised by a Native Hawaiian government, as well as the proposed privileges and immunities of a Native Hawaiian government.

(III) The proposed civil rights and protection of such rights of the citizens of a Native Hawaiian government and all persons subject to the authority of a Native Hawaiian government.

(ii) DEVELOPMENT OF ORGANIC GOVERNING DOCUMENTS.—Based upon the referendum, the Native Hawaiian Interim Governing Council is authorized to develop proposed organic governing documents for a Native Hawaiian government.

(iii) DISTRIBUTION.—The Native Hawaiian Interim Governing Council is authorized to distribute to all adult members of those listed on the roll, a copy of the proposed organic governing documents, as drafted by the Native Hawaiian Interim Governing Council, along with a brief impartial description of the proposed organic governing documents.

(iv) CONSULTATION.—The Native Hawaiian Interim Governing Council is authorized to freely consult with those members listed on the roll concerning the text and description of the proposed organic governing documents.

(D) ELECTIONS.—

(i) IN GENERAL.—The Native Hawaiian Interim Governing Council is authorized to hold elections for the purpose of ratifying the proposed organic governing documents, and upon ratification of the organic governing documents, to hold elections for the officers of the Native Hawaiian government.

(ii) ASSISTANCE.—Upon the request of the Native Hawaiian Interim Governing Council, the United States Office of Native Hawaiian Affairs may assist the Council in conducting such elections.

(4) TERMINATION.—The Native Hawaiian Interim Governing Council shall have no power or

authority under this Act after the time at which the duly elected officers of the Native Hawaiian government take office.

(d) RECOGNITION OF THE NATIVE HAWAIIAN GOVERNMENT.—

(1) PROCESS FOR RECOGNITION.—

(A) SUBMITTAL OF ORGANIC GOVERNING DOCUMENTS.—The duly elected officers of the Native Hawaiian government shall submit the organic governing documents of the Native Hawaiian government to the Secretary.

(B) CERTIFICATIONS.—Within 90 days of the date that the duly elected officers of the Native Hawaiian government submit the organic governing documents to the Secretary, the Secretary shall certify that the organic governing documents—

(i) were adopted by a majority vote of the adult members listed on the roll prepared under the authority of subsection (a);

(ii) are consistent with applicable Federal law and the special trust relationship between the United States and the indigenous native people of the United States;

(iii) provide for the exercise of those governmental authorities that are recognized by the United States as the powers and authorities that are exercised by other governments representing the indigenous, native people of the United States;

(iv) provide for the protection of the civil rights of the citizens of the Native Hawaiian government and all persons subject to the authority of the Native Hawaiian government, and to assure that the Native Hawaiian government exercises its authority consistent with the requirements of section 202 of the Act of April 11, 1968 (25 U.S.C. 1302);

(v) prevent the sale, disposition, lease, or encumbrance of lands, interests in lands, or other assets of the Native Hawaiian government without the consent of the Native Hawaiian government;

(vi) establish the criteria for citizenship in the Native Hawaiian government; and

(vii) provide authority for the Native Hawaiian government to negotiate with Federal, State, and local governments, and other entities.

(C) FAILURE TO ACT.—If the Secretary fails to act within 90 days of the date that the duly elected officers of the Native Hawaiian government submitted the organic governing documents of the Native Hawaiian government to the Secretary, the certifications authorized in subparagraph (B) shall be deemed to have been made.

(D) RESUBMISSION IN CASE OF NONCOMPLIANCE WITH FEDERAL LAW.—

(i) RESUBMISSION BY THE SECRETARY.—If the Secretary determines that the organic governing documents, or any part thereof, are not consistent with applicable Federal law, the Secretary shall resubmit the organic governing documents to the duly elected officers of the Native Hawaiian government along with a justification for each of the Secretary's findings as to why the provisions are not consistent with such law.

(ii) AMENDMENT AND RESUBMISSION BY THE NATIVE HAWAIIAN GOVERNMENT.—If the organic governing documents are resubmitted to the duly elected officers of the Native Hawaiian government by the Secretary under clause (i), the duly elected officers of the Native Hawaiian government shall—

(I) amend the organic governing documents to ensure that the documents comply with applicable Federal law; and

(II) resubmit the amended organic governing documents to the Secretary for certification in accordance with subparagraphs (B) and (C).

(2) FEDERAL RECOGNITION.—

(A) RECOGNITION.—Notwithstanding any other provision of law, upon the election of the officers of the Native Hawaiian government and the certifications (or deemed certifications) by the Secretary authorized in paragraph (1), Federal recognition is hereby extended to the Native Hawaiian government as the representative governing body of the Native Hawaiian people.

(B) NO DIMINISHMENT OF RIGHTS OR PRIVILEGES.—Nothing contained in this Act shall diminish, alter, or amend any existing rights or privileges enjoyed by the Native Hawaiian people which are not inconsistent with the provisions of this Act.

SEC. 8. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated such sums as may be necessary to carry out the activities authorized in this Act.

SEC. 9. REAFFIRMATION OF DELEGATION OF FEDERAL AUTHORITY; NEGOTIATIONS.

(a) REAFFIRMATION.—The delegation by the United States of authority to the State of Hawaii to address the conditions of Native Hawaiians contained in the Act entitled ''An Act to provide for the admission of the State of Hawaii into the Union'' approved March 18, 1959 (Public Law 86–3; 73 Stat. 5) is hereby reaffirmed.

(b) NEGOTIATIONS.—Upon the Federal recognition of the Native Hawaiian government pursuant to section 7(d)(2) of this Act, the United States is authorized to negotiate and enter into an agreement with the State of Hawaii and the Native Hawaiian government regarding the transfer of lands, resources, and assets dedicated to Native Hawaiian use under existing law as in effect on the date of the enactment of this Act to the Native Hawaiian government.

SEC. 10. DISCLAIMER.

Nothing in this Act is intended to serve as a settlement of any claims against the United States, or to affect the rights of the Native Hawaiian people under international law.

SEC. 11. REGULATIONS.

The Secretary is authorized to make such rules and regulations and such delegations of authority as the Secretary deems necessary to carry out the provisions of this Act.

SEC. 12. SEVERABILITY.

In the event that any section or provision of this Act, or any amendment made by this Act is held invalid, it is the intent of Congress that the remaining sections or provisions of this Act, and the amendments made by this Act, shall continue in full force and effect.

Section 124 includes a technical correction to allow the use of National Park Service funds for the acquisition of lands near Saddleback Mountain, Maine for inclusion in the Appalachian National Scenic Trail.

Section 125 incorporates by reference the text of the bill S. 2273, the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act of 2000, as passed by the United States Senate on October 5, 2000. The text of S. 2273 is as follows:

AN ACT To establish the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area Act of 2000''.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The areas of northwestern Nevada known as the Black Rock Desert and High Rock Canyon contain and surround the last nationally significant, untouched segments of the historic California emigrant Trails, including wagon ruts, historic inscriptions, and a wilderness landscape largely unchanged since the days of the pioneers.

(2) The relative absence of development in the Black Rock Desert and high Rock Canyon areas from emigrant times to the present day offers a unique opportunity to capture the terrain, sights, and conditions of the overland trails as they were experienced by the emigrants and to make available to both present and future generations of Americans the opportunity of experiencing emigrant conditions in an unaltered setting.

(3) The Black Rock Desert and High Rock Canyon areas are unique segments of the Northern Great Basin and contain broad representation of the Great Basin's land forms and plant and animal species, including golden eagles and other birds of prey, sage grouse, mule deer, pronghorn antelope, bighorn sheep, free roaming horses and burros, threatened fish and sensitive plants.

(4) The Black Rock-High Rock region contains a number of cultural and natural resources that have been declared eligible for National Historic Landmark and Natural Landmark status, including a portion of the 1843–44 John Charles Fremont exploration route, the site of the death of Peter Lassen, early military facilities, and examples of early homesteading and mining.

(5) The archeological, paleontological, and geographical resources of the Black Rock-High Rock region include numerous prehistoric and historic Native American sites, wooly mammoth sites, some of the largest natural potholes of North America, and a remnant dry Pleistocene lakebed (playa) where the curvature of the Earth may be observed.

(6) The two large wilderness mosaics that frame the conservation area offer exceptional opportunities for solitude and serve to protect the integrity of the viewshed of the historic emigrant trails.

(7) Public lands in the conservation area have been used for domestic livestock grazing for over a century, with resultant benefits to community stability and contributions to the local and State economies. It has not been demonstrated that continuation of this use would be incompatible with appropriate protection and sound management of the resource values of these lands; therefore, it is expected that such grazing will continue in accordance with the management plan for the conservation area and other applicable laws and regulations.

(8) The Black Rock Desert playa is a unique natural resource that serves as the primary destination for the majority of visitors to the conservation area, including visitors associated with large-scale permitted events. It is expected that such permitted events will continue to be administered in accordance with the management plan for the conservation area and other applicable laws and regulations.

SEC. 3. DEFINITIONS.

As used in this Act:

(1) The term ''Secretary'' means the Secretary of the Interior.

(2) The term ''public lands'' has the meaning stated in section 103(e) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1702(e)).

(3) The term ''conservation area'' means the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area established pursuant to section 4 of this Act.

SEC. 4. ESTABLISHMENT OF THE CONSERVATION AREA.

(a) ESTABLISHMENT AND PURPOSES.—In order to conserve, protect, and enhance for the benefit and enjoyment of present and future generations the unique and nationally important historical, cultural, paleontological, scenic, scientific, biological, educational, wildlife, riparian, wilderness, endangered species, and recreational values and resources associated with the Applegate-Lassen and Nobles Trails corridors and surrounding areas, there is hereby established the Black Rock Desert-High Rock Canyon Emigrant Trails National Conservation Area in the State of Nevada.

(b) AREAS INCLUDED.—The conservation area shall consist of approximately 797,100 acres of public lands as generally depicted on the map entitled ''Black Rock Desert Emigrant Trail National Conservation Area'' and dated July 19, 2000.

(c) MAPS AND LEGAL DESCRIPTION.—As soon as practicable after the date of the enactment of this Act, the Secretary shall submit to Congress a map and legal description of the conservation area. The map and legal description shall have the same force and effect as if included in this Act, except the Secretary may correct clerical and typographical errors in such map and legal description. Copies of the map and legal description shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

SEC. 5. MANAGEMENT.

(a) MANAGEMENT.—The Secretary, acting through the Bureau of Land Management, shall manage the conservation area in a manner that conserves, protects and enhances its resources and values, including those resources and values specified in subsection 4(a), in accordance with this Act, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), and other applicable provisions of law.

(b) ACCESS.—

(1) IN GENERAL.—The Secretary shall maintain adequate access for the reasonable use and enjoyment of the conservation area.

(2) PRIVATE LAND.—The Secretary shall provide reasonable access to privately owned land or interests in land within the boundaries of the conservation area.

(3) EXISTING PUBLIC ROADS.—The Secretary is authorized to maintain existing public access within the boundaries of the conservation area in a manner consistent with the purposes for which the conservation area was established.

(c) USES.—

(1) IN GENERAL.—The Secretary shall only allow such uses of the conservation area as the Secretary finds will further the purposes for which the conservation area is established.

(2) OFF-HIGHWAY VEHICLE USE.—Except where needed for administrative purposes or to respond to an emergency, use of motorized vehicles in the conservation area shall be permitted only on roads and trails and in other areas designated for use of motorized vehicles as part of the management plan prepared pursuant to subsection (e).

(3) PERMITTED EVENTS.—The Secretary may continue to permit large-scale events in defined, low impact areas of the Black Rock Desert playa in the conservation area in accordance with the management plan prepared pursuant to subsection (e).

(d) HUNTING, TRAPPING, AND FISHING.—Nothing in this Act shall be deemed to diminish the jurisdiction of the State of Nevada with respect to fish and wildlife management, including regulation of hunting and fishing, on public lands within the conservation area.

(e) MANAGEMENT PLAN.—Within three years following the date of enactment of this Act, the Secretary shall develop a comprehensive resource management plan for the long-term protection and management of the conservation area. The plan shall be developed with full public participation and shall describe the appropriate uses and management of the conservation area consistent with the provisions of this Act. The plan may incorporate appropriate decisions contained in any current management or activity plan for the area and may use information developed in previous studies of the lands within or adjacent to the conservation area.

(f) GRAZING.—Where the Secretary of the Interior currently permits livestock grazing in the conservation area, such grazing shall be allowed to continue subject to all applicable laws, regulations, and executive orders.

(g) VISITOR SERVICE FACILITIES.—The Secretary is authorized to establish, in cooperation with other public or private entities as the Secretary may deem appropriate, visitor service facilities for the purpose of providing information about the historical, cultural, ecological, recreational, and other resources of the conservation area.

SEC. 6. WITHDRAWAL.

(a) IN GENERAL.—Subject to valid existing rights, all Federal lands within the conservation area and all lands and interests therein which are hereafter acquired by the United States are hereby withdrawn from all forms of entry, appropriation, or disposal under the public land laws, from location, entry, and patent under the mining laws, from operation of the mineral leasing and geothermal leasing laws and from the minerals materials laws and all amendments thereto.

SEC. 7. NO BUFFER ZONES.

The Congress does not intend for the establishment of the conservation area to lead to the creation of protective perimeters or buffer zones around the conservation area. The fact that there may be activities or uses on lands outside the conservation area that would not be permitted in the conservation area shall not preclude such activities or uses on such lands up to the boundary of the conservation area consistent with other applicable laws.

SEC. 8. WILDERNESS.

(a) DESIGNATION.—In furtherance of the purposes of the Wilderness Act of 1964 (16 U.S.C. 1131 et seq.), the following lands in the State of Nevada are designated as wilderness, and, therefore, as components of the National Wilderness Preservation System:

(1) Certain lands in the Black Rock Desert Wilderness Study Area comprised of approximately 315,700 acres, as generally depicted on a map entitled ''Black Rock Desert Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the Black Rock Desert Wilderness.

(2) Certain lands in the Pahute Peak Wilderness Study Area comprised of approximately 57,400 acres, as generally depicted on a map entitled ''Pahute Peak Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the Pahute Peak Wilderness.

(3) Certain lands in the North Black Rock Range Wilderness Study Area comprised of approximately 30,800 acres, as generally depicted on a map entitled ''North Black Rock Range Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the North Black Rock Range Wilderness.

(4) Certain lands in the East Fork High Rock Canyon Wilderness Study Area comprised of approximately 52,800 acres, as generally depicted on a map entitled ''East Fork High Rock Canyon Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the East Fork High Rock Canyon Wilderness.

(5) Certain lands in the High Rock Lake Wilderness Study Area comprised of approximately 59,300 acres, as generally depicted on a map entitled ''High Rock Lake Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the High Rock Lake Wilderness.

(6) Certain lands in the Little High Rock Canyon Wilderness Study Area comprised of approximately 48,700 acres, as generally depicted on a map entitled ''Little High Rock Canyon Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the Little High Rock Canyon Wilderness.

(7) Certain lands in the High Rock Canyon Wilderness Study Area and Yellow Rock Canyon Wilderness Study Area comprised of approximately 46,600 acres, as generally depicted on a map entitled ''High Rock Canyon Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the High Rock Canyon Wilderness.

(8) Certain lands in the Calico Mountains Wilderness Study Area comprised of approximately 65,400 acres, as generally depicted on a map entitled ''Calico Mountains Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the Calico Mountains Wilderness.

(9) Certain lands in the South Jackson Mountains Wilderness Study Area comprised of approximately 56,800 acres, as generally depicted on a map entitled ''South Jackson Mountains Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the South Jackson Mountains Wilderness.

(10) Certain lands in the North Jackson Mountains Wilderness Study Area comprised of approximately 24,000 acres, as generally depicted on a map entitled ''North Jackson Mountains Wilderness—Proposed'' and dated July 19, 2000, and which shall be known as the North Jackson Mountains Wilderness.

(b) ADMINISTRATION OF WILDERNESS AREAS.—Subject to valid existing rights, each wilderness area designated by this Act shall be administered by the Secretary in accordance with the provisions of the Wilderness Act, except that any reference in such provisions to the effective date of the Wilderness Act shall be deemed to be a reference to the date of enactment of this Act and any reference to the Secretary of Agriculture shall be deemed to be a reference to the Secretary of the Interior.

(c) MAPS AND LEGAL DESCRIPTION.—As soon as practicable after the date of the enactment of this Act, the Secretary shall submit to Congress a map and legal description of the wilderness areas designated under this Act. The map and legal description shall have the same force and effect as if included in this Act, except the Secretary may correct clerical and typographical errors in such map and legal description. Copies of the map and legal description shall be on file and available for public inspection in the appropriate offices of the Bureau of Land Management.

(d) GRAZING.—Within the wilderness areas designated under subsection (a), the grazing of livestock, where established prior to the date of enactment of this Act, shall be permitted to continue subject to such reasonable regulations, policies, and practices as the Secretary deems necessary, as long as such regulations, policies, and practices fully conform with and implement the intent of Congress regarding grazing in such areas as such intent is expressed in the Wilderness Act and section 101(f) of Public Law 101–628.

SEC. 9. AUTHORIZATION OF APPROPRIATIONS.

There is hereby authorized to be appropriated such sums as may be necessary to carry out the provisions of this Act.

Section 126 increases the annual authorized funding level for the Illinois and Michigan Canal National Heritage Corridor Commission from $250,000 to $1,000,000.

Section 127. The bill S. 2885, the Jamestown 400th Commemoration Commission Act of 2000, as passed in the United States Senate on October 5, 2000, is incorporated by reference. The text of S. 2885 is as follows:

An Act to establish the Jamestown 400th Commemoration Commission, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Jamestown 400th Commemoration Commission Act of 2000''.

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds that—

(1) the founding of the colony at Jamestown, Virginia in 1607, the first permanent English colony in the New World, and the capital of Virginia for 92 years, has major significance in the history of the United States;

(2) the settlement brought people from throughout the Atlantic Basin together to form a multicultural society, including English, other Europeans, Native Americans, and Africans;

(3) the economic, political, religious, and social institutions that developed during the first 9 decades of the existence of Jamestown continue to have profound effects on the United States, particularly in English common law and

language, cross cultural relationships, and economic structure and status;

(4) the National Park Service, the Association for the Preservation of Virginia Antiquities, and the Jamestown-Yorktown Foundation of the Commonwealth of Virginia collectively own and operate significant resources related to the early history of Jamestown; and

(5) in 1996—

(A) the Commonwealth of Virginia designated the Jamestown-Yorktown Foundation as the State agency responsible for planning and implementing the Commonwealth's portion of the commemoration of the 400th anniversary of the founding of the Jamestown settlement;

(B) the Foundation created the Celebration 2007 Steering Committee, known as the Jamestown 2007 Steering Committee; and

(C) planning for the commemoration began.

(b) PURPOSE.—The purpose of this Act is to establish the Jamestown 400th Commemoration Commission to—

(1) ensure a suitable national observance of the Jamestown 2007 anniversary by complementing the programs and activities of the Commonwealth of Virginia;

(2) cooperate with and assist the programs and activities of the State in observance of the Jamestown 2007 anniversary;

(3) assist in ensuring that Jamestown 2007 observances provide an excellent visitor experience and beneficial interaction between visitors and the natural and cultural resources of the Jamestown sites;

(4) assist in ensuring that the Jamestown 2007 observances are inclusive and appropriately recognize the experiences of all people present in 17th century Jamestown;

(5) provide assistance to the development of Jamestown-related programs and activities;

(6) facilitate international involvement in the Jamestown 2007 observances;

(7) support and facilitate marketing efforts for a commemorative coin, stamp, and related activities for the Jamestown 2007 observances; and

(8) assist in the appropriate development of heritage tourism and economic benefits to the United States.

SEC. 3. DEFINITIONS.

In this Act:

(1) COMMEMORATION.—The term ''commemoration'' means the commemoration of the 400th anniversary of the founding of the Jamestown settlement.

(2) COMMISSION.—The term ''Commission'' means the Jamestown 400th Commemoration Commission established by section 4(a).

(3) GOVERNOR.—The term ''Governor'' means the Governor of Virginia.

(4) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior.

(5) STATE.—The term ''State'' means the Commonwealth of Virginia, including agencies and entities of the Commonwealth.

SEC. 4. JAMESTOWN 400TH COMMEMORATION COMMISSION.

(a) IN GENERAL.—There is established a commission to be known as the ''Jamestown 400th Commemoration Commission''.

(b) MEMBERSHIP.—

(1) IN GENERAL.—The Commission shall be composed of 15 members, of whom—

(A) 4 members shall be appointed by the Secretary, taking into consideration the recommendations of the Chairperson of the Jamestown 2007 Steering Committee;

(B) 4 members shall be appointed by the Secretary, taking into consideration the recommendations of the Governor;

(C) 2 members shall be employees of the National Park Service, of which—

(i) 1 shall be the Director of the National Park Service (or a designee); and

(ii) 1 shall be an employee of the National Park Service having experience relevant to the commemoration, to be appointed by the Secretary; and

(D) 5 members shall be individuals that have an interest in, support for, and expertise appropriate to, the commemoration, to be appointed by the Secretary.

(2) TERM; VACANCIES.—

(A) TERM.—A member of the Commission shall be appointed for the life of the Commission.

(B) VACANCIES.—

(i) IN GENERAL.—A vacancy on the Commission shall be filled in the same manner in which the original appointment was made.

(ii) PARTIAL TERM.—A member appointed to fill a vacancy on the Commission shall serve for the remainder of the term for which the predecessor of the member was appointed.

(3) MEETINGS.—

(A) IN GENERAL.—The Commission shall meet—

(i) at least twice each year; or

(ii) at the call of the Chairperson or the majority of the members of the Commission.

(B) INITIAL MEETING.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold the initial meeting of the Commission.

(4) VOTING.—

(A) IN GENERAL.—The Commission shall act only on an affirmative vote of a majority of the members of the Commission.

(B) QUORUM.—A majority of the Commission shall constitute a quorum.

(5) CHAIRPERSON.—The Secretary shall appoint a Chairperson of the Commission, taking into consideration any recommendations of the Governor.

(c) DUTIES.—

(1) IN GENERAL.—The Commission shall—

(A) plan, develop, and execute programs and activities appropriate to commemorate the 400th anniversary of the founding of Jamestown;

(B) generally facilitate Jamestown-related activities throughout the United States;

(C) encourage civic, patriotic, historical, educational, religious, economic, and other organizations throughout the United States to organize and participate in anniversary activities to expand the understanding and appreciation of the significance of the founding and early history of Jamestown;

(D) coordinate and facilitate for the public scholarly research on, publication about, and interpretation of, Jamestown; and

(E) ensure that the 400th anniversary of Jamestown provides a lasting legacy and long-term public benefit by assisting in the development of appropriate programs and facilities.

(2) PLANS; REPORTS.—

(A) STRATEGIC PLAN; ANNUAL PERFORMANCE PLANS.—In accordance with the Government Performance and Results Act of 1993 (Public Law 103–62; 107 Stat. 285), the Commission shall prepare a strategic plan and annual performance plans for the activities of the Commission carried out under this Act.

(B) FINAL REPORT.—Not later than September 30, 2008, the Commission shall complete a final report that contains—

(i) a summary of the activities of the Commission;

(ii) a final accounting of funds received and expended by the Commission; and

(iii) the findings and recommendations of the Commission.

(d) POWERS OF THE COMMISSION.—The Commission may—

(1) accept donations and make dispersions of money, personal services, and real and personal property related to Jamestown and of the significance of Jamestown in the history of the United States;

(2) appoint such advisory committees as the Commission determines to be necessary to carry out this Act;

(3) authorize any member or employee of the Commission to take any action that the Commission is authorized to take by this Act;

(4) procure supplies, services, and property, and make or enter into contracts, leases or other legal agreements, to carry out this Act (except that any contracts, leases or other legal agreements made or entered into by the Commission shall not extend beyond the date of termination of the Commission);

(5) use the United States mails in the same manner and under the same conditions as other Federal agencies;

(6) subject to approval by the Commission, make grants in amounts not to exceed $10,000 to communities and nonprofit organizations to develop programs to assist in the commemoration;

(7) make grants to research and scholarly organizations to research, publish, or distribute information relating to the early history of Jamestown; and

(8) provide technical assistance to States, localities, and nonprofit organizations to further the commemoration.

(e) COMMISSION PERSONNEL MATTERS.—

(1) COMPENSATION OF MEMBERS OF THE COMMISSION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), a member of the Commission shall serve without compensation.

(B) FEDERAL EMPLOYEES.—A member of the Commission who is an officer or employee of the Federal Government shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the Federal Government.

(C) TRAVEL EXPENSES.—A member of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under subchapter I of chapter 57 of title 5, United States Code, while away from the home or regular place of business of the member in the performance of the duties of the Commission.

(2) STAFF.—

(A) IN GENERAL.—The Chairperson of the Commission may, without regard to the civil service laws (including regulations), appoint and terminate an executive director and such other additional personnel as are necessary to enable the Commission to perform the duties of the Commission.

(B) CONFIRMATION OF EXECUTIVE DIRECTOR.—The employment of an executive director shall be subject to confirmation by the Commission.

(3) COMPENSATION.—

(A) IN GENERAL.—Except as provided in subparagraph (B), the Chairperson of the Commission may fix the compensation of the executive director and other personnel without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5, United States Code, relating to classification of positions and General Schedule pay rates.

(B) MAXIMUM RATE OF PAY.—The rate of pay for the executive director and other personnel shall not exceed the rate payable for level V of the Executive Schedule under section 5316 of title 5, United States Code.

(4) DETAIL OF GOVERNMENT EMPLOYEES.—

(A) FEDERAL EMPLOYEES.—

(i) IN GENERAL.—On the request of the Commission, the head of any Federal agency may detail, on a reimbursable or non-reimbursable basis, any of the personnel of the agency to the Commission to assist the Commission in carrying out the duties of the Commission under this Act.

(ii) CIVIL SERVICE STATUS.—The detail of an employee under clause (i) shall be without interruption or loss of civil service status or privilege.

(B) STATE EMPLOYEES.—The Commission may—

(i) accept the services of personnel detailed from States (including subdivisions of States); and

(ii) reimburse States for services of detailed personnel.

(5) VOLUNTEER AND UNCOMPENSATED SERVICES.—Notwithstanding section 1342 of title 31, United States Code, the Commission may accept and use voluntary and uncompensated services as the Commission determines necessary.

(6) SUPPORT SERVICES.—The Director of the National Park Service shall provide to the Commission, on a reimbursable basis, such administrative support services as the Commission may request.

(f) PROCUREMENT OF TEMPORARY AND INTERMITTENT SERVICES.—The Chairperson of the Commission may procure temporary and intermittent services in accordance with section 3109(b) of title 5, United States Code, at rates for individuals that do not exceed the daily equivalent of the annual rate of basic pay prescribed for level V of the Executive Schedule under section 5316 of that title.

(g) FACA NONAPPLICABILITY.—Section 14(b) of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(h) NO EFFECT ON AUTHORITY.—Nothing in this section supersedes the authority of the State, the National Park Service, or the Association for the Preservation of Virginia Antiquities, concerning the commemoration.

(i) TERMINATION.—The Commission shall terminate on December 31, 2008.

SEC. 5. AUTHORIZATION OF APPROPRIATIONS.

There are authorized to be appropriated such sums as are necessary to carry out this Act.

Section 128 provides guidance to the National Park Service on restricting the use of snowmobiles in units of the National Park System.

Section 129 extends an agreement, through March 31, 2001, dealing with seven campsite leases in the Biscayne Bay, Miami/Dade County area of Florida, collectively known as ''Stiltsville''.

Section 130 authorizes a grant of $1.3 million for the National Park Service to acquire land in Lower Phalen Creek near St. Paul, Minnesota for the Mississippi National River and Recreation Area. The land is for a trail that is being named after the late Congressman Bruce Vento.

Section 131 authorizes the transfer of funds to the George Washington's Fredericksburg Foundation, Inc. for a cooperative agreement to manage Ferry Farm, which was George Washington's boyhood home.

Section 132 prohibits the Secretary of the Interior from using funds to pay the salaries or expenses related to the issuance of a request for proposal related to a light rail system at Grand Canyon National Park until June 1, 2001. In addition, the Secretary is directed to report directly to the Committee prior to any additional action regarding a request for proposal on alternative transportation options for the park. These options should include a phase-in period based on newly updated visitation numbers. The report should also address using a bus/transit option only during high peak visitation months. Alternatives to be analyzed and costed in the report include: (1) an alternative fueled bus alternative with parking outside the park; (2) a rapid transit alternative and (3) a combination bus/rapid transit alternative.

Section 133 prohibits the Secretary of the Interior from removing a white cross erected in 1934 by the Veterans of Foreign Wars to honor the memory of fallen World War I veterans. The cross is located within the boundary of the Mojave National Preserve along Cima Road, approximately 11 miles south of Interstate 15.

Section 134 extends the term of the Chesapeake and Ohio Canal National Historical Park Commission.

Section 135 allows funds provided in Public Law 106–291 for land acquisition by the National Park Service in fiscal year 2001 for Brandywine Battlefield, Ice Age National Scenic Trail, Mississippi National River and Recreation Area, Shenandoah National Heritage Area, and Fallen Timbers Battlefield and Fort Miamis National Historic Site to be used for a grant to a state, local government, or to a land management entity.

Section 137 extends the boundary of Gulf Islands National Seashore in Mississippi to include Cat Island.

Section 138. The conference agreement includes a new provision regarding limitations on Federal Thrift Savings Plan contributions.

Section 139. The conference agreement includes a new provision regarding the exclusion of elements of the United States Secret Service from certain activities.

Section 140. The conference agreement includes a new provision providing for an average 3.7 percent salary adjustment for Federal employees in January, 2001, consistent with the alternative pay plan submitted by the Administration on November 30, 2000.

Section 141. The conference agreement includes a new provision repealing mandatory retirement for the Alaska Railroad.

Section 142. The conference agreement includes a provision amending the Juvenile Justice and Delinquency Prevention Act to allow a two year exception for the State of Alaska with respect to the holding of juveniles in adult facilities.

Section 143. The conference agreement contains the ''LPTV Pilot Project Digital Data Services Act''.

Section 144. The conference agreement includes a provision to amend the following: the Magnuson-Stevens Fishery Conservation and Management Act; P.L. 106–246; P.L. 105–83; P.L. 99–5; P.L. 106–113 regarding a fishery research vessel; the implementation of a fishing capacity reduction program for the Commercial King and Tanner Crab Fisheries in the Bering Sea and Aleutian Islands; P.L. 89–702 to be referred to as the Fur Seal Act of 1966; the National Marine Sanctuaries Act (16 U.S.C. 1433, 1434); and the Sustainable Fisheries Act (16 U.S.C. 1855 note).

Section 145. The conference agreement includes language amending the Department of State Special Agents Retirment Act of 1998 to allow agents who retired between January 1, 1997, and the enactment of the Act on November 13, 1998, to also be eligible for the increased benefits provided by the Act.

Section 146. The conference agreement includes a provision expressing the sense of Congress calling upon the President of the United States to take action to provide relief from injury caused by steel imports.

Section 147. The conference agreement includes a provision amending the Johnson Act to prohibit gambling on peri-Hawaiian cruises.

Section 148. The conference agreement includes language to ban political advertising by public broadcasters.

Section 149. The conference agreement includes language extending a certain small business program, which would otherwise expire.

Section 150. The conference agreement includes $105,000,000 in direct spending to the Department of Health and Human Services for the Ricky Ray Hemophilia Relief Fund, of which $10,000,000 is for program management.

Section 151. The conference agreement includes $60,400,000 in direct spending to the Department of Labor for costs related to administering the Energy Employees Occupational Illness Compensation Program enacted as Title XXXVI of the Defense Authorization Act of 2000. This program was established to compensate individuals who have suffered disabling and potentially fatal illnesses as a result of their work in the Department of Energy's nuclear weapons complex. The Secretary of Labor is authorized to transfer these funds to other federal agencies to the extent necessary to implement the Energy Employees Occupational Illness Compensation Act.

Section 152. The conference agreement includes a provision to make certain technical and conforming amendments to the Medicare/PPS law to allow the Moffit Cancer Research and Treatment Center to be treated under existing law the same as the other ten Medicare/PPS exempt institutions in the United States.

The conference agreement includes language which provides that the Secretary of the Army may establish a pilot program to provide environmental assistance to non-Federal interests in northern Wisconsin.

TITLE II—VIETNAM EDUCATION FOUNDATION ACT OF 2000

This title enacts a bill to establish a Vietnam Education Foundation, to provide fellowships for Vietnamese to study in the United States at the graduate and post-graduate level in the sciences, math, and medicine. It would also support American professors to teach these subjects in appropriate Vietnamese institutions. The bill authorizes an appropriation of $5,000,000 in fiscal year 2001. Beginning in FY2002, the Secretary of the Treasury would transfer $5,000,000 annually to the Foundation from debt repayments that Vietnam has agreed to make to the United States in settlement of debt incurred prior to 1976 by the Republic of South Vietnam. The Foundation can also solicit and accept private funds.

TITLE III—COLORADO UTE SETTLEMENT ACT AMENDMENTS OF 2000

The conference agreement includes the text of S. 2508, the Colorado Ute Settlement Act Amendments of 2000.

TITLE IV—DESIGNATION OF AMERICAN MUSEUM OF SCIENCE AND ENERGY

The conference agreement includes language which will permit the American Museum of Science and Energy located in Oak Ridge, Tennessee, to accept and use donations, fees, and gifts to offset the cost of operating the facility.

TITLE V—DELTA REGIONAL AUTHORITY ACT OF 2000

The conference agreement includes language which authorizes the Delta Regional Authority.

TITLE VI—DAKOTA WATER RESOURCES ACT OF 2000

The conference agreement includes the text of S. 623, the Dakota Water Resources Act of 2000.

TITLE VII

The conference agreement includes an Act authorizing the construction of a Reconciliation Place in Fort Pierre, South Dakota.

TITLE VIII—ERIE CANALWAY NATIONAL HERITAGE CORRIDOR

The conference agreement includes an Act to designate the Erie Canalway a National Heritage Corridor.

TITLE IX—LAW ENFORCEMENT PAY EQUITY ACT

The conference agreement includes a new provision regarding pay comparability for the United States Park Police, the Uniformed Division of the United States Secret Service, and the D.C. Metropolitan Police Department.

TITLE X—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ADMINISTRATIVE PROVISIONS

Language is included which makes technical changes to the fiscal year 2000 Appropriations Act regarding the Millennial Housing Commission.

Language is included which codifies the multiplier the Federal Home Loan Mortgage Corporation can use for reaching the multifamily affordable housing goal.

Language is included to allow the conversion of a HUD rental housing project in Toledo, Ohio to condominiums as long as the housing remains affordable, either as rental or homeownership housing, to low- and very-low income families that currently reside in the apartments.

Language has been included which directs the General Accounting Office to study and report on financial standards related to the Federal Home Loan Bank System.

TITLE XI—DEPARTMENT OF THE TREASURY

ADMINISTRATIVE PROVISION

Language is included which honors the Navajo Code Talkers of World War II by authorizing the striking and presentation of a gold medal of appropriate design to each of the original 29 Navajo Code Talkers or a surviving family member, striking and presentation of a silver medal to each man or surviving family member qualified as a Navajo Code Talker, and by further authorizing the striking of duplicate medals in bronze for sale to the general public.

TITLE XII—ENVIRONMENTAL PROTECTION AGENCY

ADMINISTRATIVE PROVISIONS

Language is included authorizing the aboveground storage tank grant program.

TITLE XIII—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

ADMINISTRATIVE PROVISION

Language is included which permits NASA to use certain proceeds from the sale of timber on lands associated with the John C. Stennis Space Center for the purchase of additional property to establish education and visitor programs and facilities, and for wetlands mitigation.

TITLE XIV—CERTAIN ALASKAN CRUISE SHIP OPERATIONS

Language is included which regulates the discharge of sewage and wastewater from cruise ships in certain waters in and adjacent to the State of Alaska.

TITLE XV—LIFE ACT AMENDMENTS

The conference agreement includes a new title, titled the LIFE Act Amendments of 2000.

TITLE XVI—IMPROVING LITERACY THROUGH FAMILY LITERACY PROJECTS

The conference agreement includes the Literacy Involves Families Together Act of 2000.

TITLE XVII—CHILDREN'S INTERNET PROTECTION

The conference agreement includes the Children's Internet Protection Act of 2000.

COMMODITY FUTURES MODERNIZATION ACT OF 2000

The conference agreement would enact the provisions of H.R. 5660, as introduced on December 14, 2000. The text of that bill follows:

A BILL To reauthorize and amend the Commodity Exchange Act to promote legal certainty, enhance competition, and reduce systemic risk in markets for futures and over-the-counter derivatives, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Commodity Futures Modernization Act of 2000''.

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Purposes.

TITLE I—COMMODITY FUTURES MODERNIZATION

Sec. 101. Definitions.
Sec. 102. Agreements, contracts, and transactions in foreign currency, government securities, and certain other commodities.
Sec. 103. Legal certainty for excluded derivative transactions.
Sec. 104. Excluded electronic trading facilities.
Sec. 105. Hybrid instruments; swap transactions.
Sec. 106. Transactions in exempt commodities.
Sec. 107. Application of commodity futures laws.
Sec. 108. Protection of the public interest.
Sec. 109. Prohibited transactions.
Sec. 110. Designation of boards of trade as contract markets.
Sec. 111. Derivatives transaction execution facilities.
Sec. 112. Derivatives clearing.
Sec. 113. Common provisions applicable to registered entities.
Sec. 114. Exempt boards of trade.
Sec. 115. Suspension or revocation of designation as contract market.
Sec. 116. Authorization of appropriations.
Sec. 117. Preemption.
Sec. 118. Predispute resolution agreements for institutional customers.
Sec. 119. Consideration of costs and benefits and antitrust laws.
Sec. 120. Contract enforcement between eligible counterparties.
Sec. 121. Special procedures to encourage and facilitate bona fide hedging by agricultural producers.
Sec. 122. Rule of construction.
Sec. 123. Technical and conforming amendments.
Sec. 124. Privacy.
Sec. 125. Report to Congress.
Sec. 126. International activities of the Commodity Futures Trading Commission.

TITLE II—COORDINATED REGULATION OF SECURITY FUTURES PRODUCTS

SUBTITLE A—SECURITIES LAW AMENDMENTS

Sec. 201. Definitions under the Securities Exchange Act of 1934.
Sec. 202. Regulatory relief for markets trading security futures products.
Sec. 203. Regulatory relief for intermediaries trading security futures products.
Sec. 204. Special provisions for interagency cooperation.
Sec. 205. Maintenance of market integrity for security futures products.
Sec. 206. Special provisions for the trading of security futures products.
Sec. 207. Clearance and settlement.
Sec. 208. Amendments relating to registration and disclosure issues under the Securities Act of 1933 and the Securities Exchange Act of 1934.
Sec. 209. Amendments to the Investment Company Act of 1940 and the Investment Advisers Act of 1940.
Sec. 210. Preemption of State laws.

SUBTITLE B—AMENDMENTS TO THE COMMODITY EXCHANGE ACT

Sec. 251. Jurisdiction of Securities and Exchange Commission; other provisions.
Sec. 252. Application of the Commodity Exchange Act to national securities exchanges and national securities associations that trade security futures.
Sec. 253. Notification of investigations and enforcement actions.

TITLE III—LEGAL CERTAINTY FOR SWAP AGREEMENTS

Sec. 301. Swap agreement.
Sec. 302. Amendments to the Securities Act of 1933.
Sec. 303. Amendments to the Securities Exchange Act of 1934.
Sec. 304. Savings provision.

TITLE IV—REGULATORY RESPONSIBILITY FOR BANK PRODUCTS

Sec. 401. Short title.
Sec. 402. Definitions.
Sec. 403. Exclusion of identified banking products commonly offered on or before December 5, 2000.
Sec. 404. Exclusion of certain identified banking products offered by banks after December 5, 2000.
Sec. 405. Exclusion of certain other identified banking products.
Sec. 406. Administration of the predominance test.
Sec. 407. Exclusion of covered swap agreements.
Sec. 408. Contract enforcement.

SEC. 2. PURPOSES.

The purposes of this Act are—

(1) to reauthorize the appropriation for the Commodity Futures Trading Commission;

(2) to streamline and eliminate unnecessary regulation for the commodity futures exchanges and other entities regulated under the Commodity Exchange Act;

(3) to transform the role of the Commodity Futures Trading Commission to oversight of the futures markets;

(4) to provide a statutory and regulatory framework for allowing the trading of futures on securities;

(5) to clarify the jurisdiction of the Commodity Futures Trading Commission over certain retail foreign exchange transactions and bucket shops that may not be otherwise regulated;

(6) to promote innovation for futures and derivatives and to reduce systemic risk by enhancing legal certainty in the markets for certain futures and derivatives transactions;

(7) to reduce systemic risk and provide greater stability to markets during times of market disorder by allowing the clearing of transactions in over-the-counter derivatives through appropriately regulated clearing organizations; and

(8) to enhance the competitive position of United States financial institutions and financial markets.

TITLE I—COMMODITY FUTURES MODERNIZATION

SEC. 101. DEFINITIONS.

Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) is amended—

(1) by redesignating paragraphs (1) through (7), (8) through (12), (13) through (15), and (16) as paragraphs (2) through (8), (16) through (20), (22) through (24), and (28), respectively;

(2) by inserting before paragraph (2) (as redesignated by paragraph (1)) the following:

''(1) ALTERNATIVE TRADING SYSTEM.—The term 'alternative trading system' means an organization, association, or group of persons that—

''(A) is registered as a broker or dealer pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof);

''(B) performs the functions commonly performed by an exchange (as defined in section 3(a)(1) of the Securities Exchange Act of 1934);

''(C) does not—

''(i) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on the alternative trading system; or

''(ii) discipline subscribers other than by exclusion from trading; and

''(D) is exempt from the definition of the term 'exchange' under such section 3(a)(1) by rule or regulation of the Securities and Exchange Commission on terms that require compliance with regulations of its trading functions.'';

(3) by striking paragraph (2) (as redesignated by paragraph (1)) and inserting the following:

''(2) BOARD OF TRADE.—The term 'board of trade' means any organized exchange or other trading facility.'';

(4) by inserting after paragraph (8) (as redesignated by paragraph (1)) the following:

''(9) DERIVATIVES CLEARING ORGANIZATION.—

''(A) IN GENERAL.—The term 'derivatives clearing organization' means a clearinghouse,

clearing association, clearing corporation, or similar entity, facility, system, or organization that, with respect to an agreement, contract, or transaction—

''(i) enables each party to the agreement, contract, or transaction to substitute, through novation or otherwise, the credit of the derivatives clearing organization for the credit of the parties;

''(ii) arranges or provides, on a multilateral basis, for the settlement or netting of obligations resulting from such agreements, contracts, or transactions executed by participants in the derivatives clearing organization; or

''(iii) otherwise provides clearing services or arrangements that mutualize or transfer among participants in the derivatives clearing organization the credit risk arising from such agreements, contracts, or transactions executed by the participants.

''(B) EXCLUSIONS.—The term 'derivatives clearing organization' does not include an entity, facility, system, or organization solely because it arranges or provides for—

''(i) settlement, netting, or novation of obligations resulting from agreements, contracts, or transactions, on a bilateral basis and without a central counterparty;

''(ii) settlement or netting of cash payments through an interbank payment system; or

''(iii) settlement, netting, or novation of obligations resulting from a sale of a commodity in a transaction in the spot market for the commodity.

''(10) ELECTRONIC TRADING FACILITY.—The term 'electronic trading facility' means a trading facility that—

''(A) operates by means of an electronic or telecommunications network; and

''(B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility.

''(11) ELIGIBLE COMMERCIAL ENTITY.—The term 'eligible commercial entity' means, with respect to an agreement, contract or transaction in a commodity—

''(A) an eligible contract participant described in clause (i), (ii), (v), (vii), (viii), or (ix) of paragraph (12)(A) that, in connection with its business—

''(i) has a demonstrable ability, directly or through separate contractual arrangements, to make or take delivery of the underlying commodity;

''(ii) incurs risks, in addition to price risk, related to the commodity; or

''(iii) is a dealer that regularly provides risk management or hedging services to, or engages in market-making activities with, the foregoing entities involving transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity;

''(B) an eligible contract participant, other than a natural person or an instrumentality, department, or agency of a State or local governmental entity, that—

''(i) regularly enters into transactions to purchase or sell the commodity or derivative agreements, contracts, or transactions in the commodity; and

''(ii) either—

''(I) in the case of a collective investment vehicle whose participants include persons other than—

''(aa) qualified eligible persons, as defined in Commission rule 4.7(a) (17 C.F.R. 4.7(a));

''(bb) accredited investors, as defined in Regulation D of the Securities and Exchange Commission under the Securities Act of 1933 (17 C.F.R. 230.501(a)), with total assets of $2,000,000; or

''(cc) qualified purchasers, as defined in section 2(a)(51)(A) of the Investment Company Act of 1940;

in each case as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000, has, or is one of a group of vehicles under common control or management having in the aggregate, $1,000,000,000 in total assets; or

''(II) in the case of other persons, has, or is one of a group of persons under common control or management having in the aggregate, $100,000,000 in total assets; or

''(C) such other persons as the Commission shall determine appropriate and shall designate by rule, regulation, or order.

''(12) ELIGIBLE CONTRACT PARTICIPANT.—The term 'eligible contract participant' means—

''(A) acting for its own account—

''(i) a financial institution;

''(ii) an insurance company that is regulated by a State, or that is regulated by a foreign government and is subject to comparable regulation as determined by the Commission, including a regulated subsidiary or affiliate of such an insurance company;

''(iii) an investment company subject to regulation under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the investment company or the foreign person is itself an eligible contract participant);

''(iv) a commodity pool that—

''(I) has total assets exceeding $5,000,000; and

''(II) is formed and operated by a person subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation (regardless of whether each investor in the commodity pool or the foreign person is itself an eligible contract participant);

''(v) a corporation, partnership, proprietorship, organization, trust, or other entity—

''(I) that has total assets exceeding $10,000,000;

''(II) the obligations of which under an agreement, contract, or transaction are guaranteed or otherwise supported by a letter of credit or keepwell, support, or other agreement by an entity described in subclause (I), in clause (i), (ii), (iii), (iv), or (vii), or in subparagraph (C); or

''(III) that—

''(aa) has a net worth exceeding $1,000,000; and

''(bb) enters into an agreement, contract, or transaction in connection with the conduct of the entity's business or to manage the risk associated with an asset or liability owned or incurred or reasonably likely to be owned or incurred by the entity in the conduct of the entity's business;

''(vi) an employee benefit plan subject to the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 et seq.), a governmental employee benefit plan, or a foreign person performing a similar role or function subject as such to foreign regulation—

''(I) that has total assets exceeding $5,000,000; or

''(II) the investment decisions of which are made by—

''(aa) an investment adviser or commodity trading advisor subject to regulation under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.) or this Act;

''(bb) a foreign person performing a similar role or function subject as such to foreign regulation;

''(cc) a financial institution; or

''(dd) an insurance company described in clause (ii), or a regulated subsidiary or affiliate of such an insurance company;

''(vii)(I) a governmental entity (including the United States, a State, or a foreign government) or political subdivision of a governmental entity;

''(II) a multinational or supranational government entity; or

''(III) an instrumentality, agency, or department of an entity described in subclause (I) or (II);

except that such term does not include an entity, instrumentality, agency, or department referred to in subclause (I) or (III) of this clause unless (aa) the entity, instrumentality, agency, or department is a person described in clause (i), (ii), or (iii) of section 1a(11)(A); (bb) the entity, instrumentality, agency, or department owns and invests on a discretionary basis $25,000,000 or more in investments; or (cc) the agreement, contract, or transaction is offered by, and entered into with, an entity that is listed in any of subclauses (I) through (VI) of section 2(c)(2)(B)(ii);

''(viii)(I) a broker or dealer subject to regulation under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.) or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the broker or dealer or foreign person is a natural person or proprietorship, the broker or dealer or foreign person shall not be considered to be an eligible contract participant unless the broker or dealer or foreign person also meets the requirements of clause (v) or (xi);

''(II) an associated person of a registered broker or dealer concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h));

''(III) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(i));

''(ix) a futures commission merchant subject to regulation under this Act or a foreign person performing a similar role or function subject as such to foreign regulation, except that, if the futures commission merchant or foreign person is a natural person or proprietorship, the futures commission merchant or foreign person shall not be considered to be an eligible contract participant unless the futures commission merchant or foreign person also meets the requirements of clause (v) or (xi);

''(x) a floor broker or floor trader subject to regulation under this Act in connection with any transaction that takes place on or through the facilities of a registered entity or an exempt board of trade, or any affiliate thereof, on which such person regularly trades; or

''(xi) an individual who has total assets in an amount in excess of—

''(I) $10,000,000; or

''(II) $5,000,000 and who enters into the agreement, contract, or transaction in order to manage the risk associated with an asset owned or liability incurred, or reasonably likely to be owned or incurred, by the individual;

''(B)(i) a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), acting as broker or performing an equivalent agency function on behalf of another person described in subparagraph (A) or (C); or

''(ii) an investment adviser subject to regulation under the Investment Advisers Act of 1940, a commodity trading advisor subject to regulation under this Act, a foreign person performing a similar role or function subject as such to foreign regulation, or a person described in clause (i), (ii), (iv), (v), (viii), (ix), or (x) of subparagraph (A) or in subparagraph (C), in any such case acting as investment manager or fiduciary (but excluding a person acting as broker or performing an equivalent agency function) for another person described in subparagraph (A) or (C) and who is authorized by such person to commit such person to the transaction; or

''(C) any other person that the Commission determines to be eligible in light of the financial or other qualifications of the person.

''(13) EXCLUDED COMMODITY.—The term 'excluded commodity' means—

''(i) an interest rate, exchange rate, currency, security, security index, credit risk or measure, debt or equity instrument, index or measure of inflation, or other macroeconomic index or measure;

''(ii) any other rate, differential, index, or measure of economic or commercial risk, return, or value that is—

''(I) not based in substantial part on the value of a narrow group of commodities not described in clause (i); or

''(II) based solely on 1 or more commodities that have no cash market;

''(iii) any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction; or

''(iv) an occurrence, extent of an occurrence, or contingency (other than a change in the price, rate, value, or level of a commodity not described in clause (i)) that is—

''(I) beyond the control of the parties to the relevant contract, agreement, or transaction; and

''(II) associated with a financial, commercial, or economic consequence.

''(14) EXEMPT COMMODITY.—The term 'exempt commodity' means a commodity that is not an excluded commodity or an agricultural commodity.

''(15) FINANCIAL INSTITUTION.—The term 'financial institution' means—

''(A) a corporation operating under the fifth undesignated paragraph of section 25 of the Federal Reserve Act (12 U.S.C. 603), commonly known as 'an agreement corporation';

''(B) a corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 et seq.), commonly known as an 'Edge Act corporation';

''(C) an institution that is regulated by the Farm Credit Administration;

''(D) a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

''(E) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813));

''(F) a foreign bank or a branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(b)));

''(G) any financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956);

''(H) a trust company; or

''(I) a similarly regulated subsidiary or affiliate of an entity described in any of subparagraphs (A) through (H).'';

(5) by inserting after paragraph (20) (as redesignated by paragraph (1)) the following:

''(21) HYBRID INSTRUMENT.—The term 'hybrid instrument' means a security having 1 or more payments indexed to the value, level, or rate of, or providing for the delivery of, 1 or more commodities.'';

(6) by striking paragraph (24) (as redesignated by paragraph (1)) and inserting the following:

''(24) MEMBER OF A CONTRACT MARKET; MEMBER OF A DERIVATIVES TRANSACTION EXECUTION FACILITY.—The term 'member' means, with respect to a contract market or derivatives transaction execution facility, an individual, association, partnership, corporation, or trust—

''(A) owning or holding membership in, or admitted to membership representation on, the contract market or derivatives transaction execution facility; or

''(B) having trading privileges on the contract market or derivatives transaction execution facility.

''(25) NARROW-BASED SECURITY INDEX.—

''(A) The term 'narrow-based security index' means an index—

''(i) that has 9 or fewer component securities;

''(ii) in which a component security comprises more than 30 percent of the index's weighting;

''(iii) in which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

''(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

''(B) Notwithstanding subparagraph (A), an index is not a narrow-based security index if—

''(i)(I) it has at least 9 component securities;

''(II) no component security comprises more than 30 percent of the index's weighting; and

''(III) each component security is—

''(aa) registered pursuant to section 12 of the Securities Exchange Act of 1934;

''(bb) 1 of 750 securities with the largest market capitalization; and

''(cc) 1 of 675 securities with the largest dollar value of average daily trading volume;

''(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before the date of enactment of the Commodity Futures Modernization Act of 2000;

''(iii)(I) a contract of sale for future delivery on the index traded on a designated contract market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

''(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

''(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Securities and Exchange Commission;

''(v) no more than 18 months have passed since the date of enactment of the Commodity Futures Modernization Act of 2000 and—

''(I) it is traded on or subject to the rules of a foreign board of trade;

''(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before the date of the enactment of the Commodity Futures Modernization Act of 2000; and

''(III) the conditions of such authorization continue to be met; or

''(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Securities and Exchange Commission.

''(C) Within 1 year after the date of the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission jointly shall adopt rules or regulations that set forth the requirements under subparagraph (B)(iv).

''(D) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (B) shall not be a narrow-based security index for the 3 following calendar months.

''(E) For purposes of subparagraphs (A) and (B)—

''(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

''(ii) the Commission and the Securities and Exchange Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

''(26) OPTION.—The term 'option' means an agreement, contract, or transaction that is of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty'.

''(27) ORGANIZED EXCHANGE.—The term 'organized exchange' means a trading facility that—

''(A) permits trading—

''(i) by or on behalf of a person that is not an eligible contract participant; or

''(ii) by persons other than on a principal-to-principal basis; or

''(B) has adopted (directly or through another nongovernmental entity) rules that—

''(i) govern the conduct of participants, other than rules that govern the submission of orders or execution of transactions on the trading facility; and

''(ii) include disciplinary sanctions other than the exclusion of participants from trading.''; and

(7) by adding at the end the following:

''(29) REGISTERED ENTITY.—The term 'registered entity' means—

''(A) a board of trade designated as a contract market under section 5;

''(B) a derivatives transaction execution facility registered under section 5a;

''(C) a derivatives clearing organization registered under section 5b; and

''(D) a board of trade designated as a contract market under section 5f.

''(30) SECURITY.—The term 'security' means a security as defined in section 2(a)(1) of the Securities Act of 1933 (15 U.S.C. 77b(a)(1)) or section 3(a)(10) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(10)).

''(31) SECURITY FUTURE.—The term 'security future' means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982). The term 'security future' does not include any agreement, contract, or transaction excluded from this Act under section 2(c), 2(d), 2(f), or 2(g) of this Act (as in effect on the date of the enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

''(32) SECURITY FUTURES PRODUCT.—The term 'security futures product' means a security future or any put, call, straddle, option, or privilege on any security future.

''(33) TRADING FACILITY.—

''(A) IN GENERAL.—The term 'trading facility' means a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions by accepting bids and offers made by other participants that are open to multiple participants in the facility or system.

''(B) EXCLUSIONS.—The term 'trading facility' does not include—

''(i) a person or group of persons solely because the person or group of persons constitutes, maintains, or provides an electronic facility or system that enables participants to negotiate the terms of and enter into bilateral transactions as a result of communications exchanged by the parties and not from interaction of multiple bids and multiple offers within a predetermined, nondiscretionary automated trade matching and execution algorithm;

''(ii) a government securities dealer or government securities broker, to the extent that the dealer or broker executes or trades agreements, contracts, or transactions in government securities, or assists persons in communicating about, negotiating, entering into, executing, or trading an agreement, contract, or transaction in government securities (as the terms 'government securities dealer', 'government securities broker',

and 'government securities' are defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a))); or

''(iii) facilities on which bids and offers, and acceptances of bids and offers effected on the facility, are not binding.

Any person, group of persons, dealer, broker, or facility described in clause (i) or (ii) is excluded from the meaning of the term 'trading facility' for the purposes of this Act without any prior specific approval, certification, or other action by the Commission.

''(C) SPECIAL RULE.—A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of transactions executed on or through the person or group of persons.''.

SEC. 102. AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is amended by adding at the end the following:

''(c) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN FOREIGN CURRENCY, GOVERNMENT SECURITIES, AND CERTAIN OTHER COMMODITIES.—

''(1) IN GENERAL.—Except as provided in paragraph (2), nothing in this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in—

''(A) foreign currency;

''(B) government securities;

''(C) security warrants;

''(D) security rights;

''(E) resales of installment loan contracts;

''(F) repurchase transactions in an excluded commodity; or

''(G) mortgages or mortgage purchase commitments.

''(2) COMMISSION JURISDICTION.—

''(A) AGREEMENTS, CONTRACTS, AND TRANSACTIONS TRADED ON AN ORGANIZED EXCHANGE.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction described in paragraph (1) that is—

''(i) a contract of sale of a commodity for future delivery (or an option on such a contract), or an option on a commodity (other than foreign currency or a security or a group or index of securities), that is executed or traded on an organized exchange; or

''(ii) an option on foreign currency executed or traded on an organized exchange that is not a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934.

''(B) AGREEMENTS, CONTRACTS, AND TRANSACTIONS IN RETAIL FOREIGN CURRENCY.—This Act applies to, and the Commission shall have jurisdiction over, an agreement, contract, or transaction in foreign currency that—

''(i) is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934); and

''(ii) is offered to, or entered into with, a person that is not an eligible contract participant, unless the counterparty, or the person offering to be the counterparty, of the person is—

''(I) a financial institution;

''(II) a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5) or a futures commission merchant registered under this Act;

''(III) an associated person of a broker or dealer registered under section 15(b) or 15C of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b), 78o–5), or an affiliated person of a futures commission merchant registered under this Act, concerning the financial or securities activities of which the registered person makes and keeps records under section 15C(b) or 17(h) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–5(b), 78q(h)) or section 4f(c)(2)(B) of this Act;

''(IV) an insurance company described in section 1a(12)(A)(ii) of this Act, or a regulated subsidiary or affiliate of such an insurance company;

''(V) a financial holding company (as defined in section 2 of the Bank Holding Company Act of 1956); or

''(VI) an investment bank holding company (as defined in section 17(i) of the Securities Exchange Act of 1934).

''(C) Notwithstanding subclauses (II) and (III) of subparagraph (B)(ii), agreements, contracts, or transactions described in subparagraph (B) shall be subject to sections 4b, 4c(b), 6(c) and 6(d) (to the extent that sections 6(c) and 6(d) prohibit manipulation of the market price of any commodity, in interstate commerce, or for future delivery on or subject to the rules of any market), 6c, 6d, and 8(a) if they are entered into by a futures commission merchant or an affiliate of a futures commission merchant that is not also an entity described in subparagraph (B)(ii) of this paragraph.''.

SEC. 103. LEGAL CERTAINTY FOR EXCLUDED DERIVATIVE TRANSACTIONS.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further amended by adding at the end the following:

''(d) EXCLUDED DERIVATIVE TRANSACTIONS.—

''(1) IN GENERAL.—Nothing in this Act (other than section 5b or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

''(A) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants at the time at which the persons enter into the agreement, contract, or transaction; and

''(B) the agreement, contract, or transaction is not executed or traded on a trading facility.

''(2) ELECTRONIC TRADING FACILITY EXCLUSION.—Nothing in this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)(B)) governs or applies to an agreement, contract, or transaction in an excluded commodity if—

''(A) the agreement, contract, or transaction is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii);

''(B) the agreement, contract, or transaction is entered into only between persons that are eligible contract participants described in subparagraph (A), (B)(ii), or (C) of section 1a(12)) at the time at which the persons enter into the agreement, contract, or transaction; and

''(C) the agreement, contract, or transaction is executed or traded on an electronic trading facility.''.

SEC. 104. EXCLUDED ELECTRONIC TRADING FACILITIES.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further amended by adding at the end the following:

''(e) EXCLUDED ELECTRONIC TRADING FACILITIES.—

''(1) IN GENERAL.—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to an electronic trading facility that limits transactions authorized to be conducted on its facilities to those satisfying the requirements of section 2(d)(2), 2(g), or 2(h)(3).

''(2) EFFECT ON AUTHORITY TO ESTABLISH AND OPERATE.—Nothing in this Act shall prohibit a board of trade designated by the Commission as a contract market or derivatives transaction execution facility, or operating as an exempt board of trade from establishing and operating an electronic trading facility excluded under this Act pursuant to paragraph (1).

''(3) EFFECT ON TRANSACTIONS.—No failure by an electronic trading facility to limit transactions as required by paragraph (1) of this subsection or to comply with section 2(h)(5) shall in itself affect the legality, validity, or enforceability of an agreement, contract, or transaction entered into or traded on the electronic trading facility or cause a participant on the system to be in violation of this Act.

''(4) SPECIAL RULE.—A person or group of persons that would not otherwise constitute a trading facility shall not be considered to be a trading facility solely as a result of the submission to a derivatives clearing organization of transactions executed on or through the person or group of persons.''.

SEC. 105. HYBRID INSTRUMENTS; SWAP TRANSACTIONS.

(a) HYBRID INSTRUMENTS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further amended by adding at the end the following:

''(f) EXCLUSION FOR QUALIFYING HYBRID INSTRUMENTS.—

''(1) IN GENERAL.—Nothing in this Act (other than section 12(e)(2)(B)) governs or is applicable to a hybrid instrument that is predominantly a security.

''(2) PREDOMINANCE.—A hybrid instrument shall be considered to be predominantly a security if—

''(A) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument, substantially contemporaneously with delivery of the hybrid instrument;

''(B) the purchaser or holder of the hybrid instrument is not required to make any payment to the issuer in addition to the purchase price paid under subparagraph (A), whether as margin, settlement payment, or otherwise, during the life of the hybrid instrument or at maturity;

''(C) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

''(D) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to this Act.

''(3) MARK-TO-MARKET MARGINING REQUIREMENTS.—For the purposes of paragraph (2)(C), mark-to-market margining requirements do not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.''.

(b) SWAP TRANSACTIONS.—Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further amended by adding at the end the following:

''(g) EXCLUDED SWAP TRANSACTIONS.—No provision of this Act (other than section 5a (to the extent provided in section 5a(g)), 5b, 5d, or 12(e)(2)) shall apply to or govern any agreement, contract, or transaction in a commodity other than an agricultural commodity if the agreement, contract, or transaction is—

''(1) entered into only between persons that are eligible contract participants at the time they enter into the agreement, contract, or transaction;

''(2) subject to individual negotiation by the parties; and

''(3) not executed or traded on a trading facility.''.

(c) STUDY REGARDING RETAIL SWAPS.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System, the Secretary of the Treasury, the Commodity Futures Trading Commission, and the Securities and Exchange Commission shall conduct a study of issues involving the offering of swap agreements to persons other than eligible contract participants (as defined in section 1a of the Commodity Exchange Act).

(2) MATTERS TO BE ADDRESSED.—The study shall address—

(A) the potential uses of swap agreements by persons other than eligible contract participants;

(B) the extent to which financial institutions are willing to offer swap agreements to persons other than eligible contract participants;

(C) the appropriate regulatory structure to address customer protection issues that may arise in connection with the offer of swap agreements to persons other than eligible contract participants; and

(D) such other relevant matters deemed necessary or appropriate to address.

(3) REPORT.—Before the end of the 1-year period beginning on the date of enactment of this Act, a report on the findings and conclusions of the study required by paragraph (1) shall be submitted to Congress, together with such recommendations for legislative action as are deemed necessary and appropriate.

SEC. 106. TRANSACTIONS IN EXEMPT COMMODITIES.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further amended by adding at the end the following.

''(h) LEGAL CERTAINTY FOR CERTAIN TRANSACTIONS IN EXEMPT COMMODITIES.—

''(1) Except as provided in paragraph (2), nothing in this Act shall apply to a contract, agreement or transaction in an exempt commodity which—

''(A) is entered into solely between persons that are eligible contract participants at the time the persons enter into the agreement, contract, or transaction; and

''(B) is not entered into on a trading facility.

''(2) An agreement, contract, or transaction described in paragraph (1) of this subsection shall be subject to—

''(A) sections 5b and 12(e)(2)(B);

''(B) sections 4b, 4o, 6(c), 6(d), 6c, 6d, and 8a, and the regulations of the Commission pursuant to section 4c(b) proscribing fraud in connection with commodity option transactions, to the extent the agreement, contract, or transaction is not between eligible commercial entities (unless 1 of the entities is an instrumentality, department, or agency of a State or local governmental entity) and would otherwise be subject to such sections and regulations; and

''(C) sections 6(c), 6(d), 6c, 6d, 8a, and 9(a)(2), to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and the agreement, contract, or transaction would otherwise be subject to such sections.

''(3) Except as provided in paragraph (4), nothing in this Act shall apply to an agreement, contract, or transaction in an exempt commodity which is—

''(A) entered into on a principal-to-principal basis solely between persons that are eligible commercial entities at the time the persons enter into the agreement, contract, or transaction; and

''(B) executed or traded on an electronic trading facility.

''(4) An agreement, contract, or transaction described in paragraph (3) of this subsection shall be subject to—

''(A) sections 5a (to the extent provided in section 5a(g)), 5b, 5d, and 12(e)(2)(B);

''(B) sections 4b and 4o and the regulations of the Commission pursuant to section 4c(b) proscribing fraud in connection with commodity option transactions to the extent the agreement, contract, or transaction would otherwise be subject to such sections and regulations;

''(C) sections 6(c) and 9(a)(2), to the extent such sections prohibit manipulation of the market price of any commodity in interstate commerce and to the extent the agreement, contract, or transaction would otherwise be subject to such sections; and

''(D) such rules and regulations as the Commission may prescribe if necessary to ensure timely dissemination by the electronic trading facility of price, trading volume, and other trading data to the extent appropriate, if the Commission determines that the electronic trading facility performs a significant price discovery function for transactions in the cash market for the commodity underlying any agreement, contract, or transaction executed or traded on the electronic trading facility.

''(5) An electronic trading facility relying on the exemption provided in paragraph (3) shall—

''(A) notify the Commission of its intention to operate an electronic trading facility in reliance on the exemption set forth in paragraph (3), which notice shall include—

''(i) the name and address of the facility and a person designated to receive communications from the Commission;

''(ii) the commodity categories that the facility intends to list or otherwise make available for trading on the facility in reliance on the exemption set forth in paragraph (3);

''(iii) certifications that—

''(I) no executive officer or member of the governing board of, or any holder of a 10 percent or greater equity interest in, the facility is a person described in any of subparagraphs (A) through (H) of section 8a(2);

''(II) the facility will comply with the conditions for exemption under this paragraph; and

''(III) the facility will notify the Commission of any material change in the information previously provided by the facility to the Commission pursuant to this paragraph; and

''(iv) the identity of any derivatives clearing organization to which the facility transmits or intends to transmit transaction data for the purpose of facilitating the clearance and settlement of transactions conducted on the facility in reliance on the exemption set forth in paragraph (3);

''(B)(i)(I) provide the Commission with access to the facility's trading protocols and electronic access to the facility with respect to transactions conducted in reliance on the exemption set forth in paragraph (3); or

''(II) provide such reports to the Commission regarding transactions executed on the facility in reliance on the exemption set forth in paragraph (3) as the Commission may from time to time request to enable the Commission to satisfy its obligations under this Act;

''(ii) maintain for 5 years, and make available for inspection by the Commission upon request, records of activities related to its business as an electronic trading facility exempt under paragraph (3), including—

''(I) information relating to data entry and transaction details sufficient to enable the Commission to reconstruct trading activity on the facility conducted in reliance on the exemption set forth in paragraph (3); and

''(II) the name and address of each participant on the facility authorized to enter into transactions in reliance on the exemption set forth in paragraph (3); and

''(iii) upon special call by the Commission, provide to the Commission, in a form and manner and within the period specified in the special call, such information related to its business as an electronic trading facility exempt under paragraph (3), including information relating to data entry and transaction details in respect of transactions entered into in reliance on the exemption set forth in paragraph (3), as the Commission may determine appropriate—

''(I) to enforce the provisions specified in subparagraphs (B) and (C) of paragraph (4);

''(II) to evaluate a systemic market event; or

''(III) to obtain information requested by a Federal financial regulatory authority in order to enable the regulator to fulfill its regulatory or supervisory responsibilities;

''(C)(i) upon receipt of any subpoena issued by or on behalf of the Commission to any foreign person who the Commission believes is conducting or has conducted transactions in reliance on the exemption set forth in paragraph (3) on or through the electronic trading facility relating to the transactions, promptly notify the foreign person of, and transmit to the foreign person, the subpoena in a manner reasonable under the circumstances, or as specified by the Commission; and

''(ii) if the Commission has reason to believe that a person has not timely complied with a subpoena issued by or on behalf of the Commission pursuant to clause (i), and the Commission in writing has directed that a facility relying on the exemption set forth in paragraph (3) deny or limit further transactions by the person, the facility shall deny that person further trading access to the facility or, as applicable, limit that person's access to the facility for liquidation trading only;

''(D) comply with the requirements of this paragraph applicable to the facility and require that each participant, as a condition of trading on the facility in reliance on the exemption set forth in paragraph (3), agree to comply with all applicable law;

''(E) have a reasonable basis for believing that participants authorized to conduct transactions on the facility in reliance on the exemption set forth in paragraph (3) are eligible commercial entities; and

''(F) not represent to any person that the facility is registered with, or designated, recognized, licensed or approved by the Commission.

''(6) A person named in a subpoena referred to in paragraph (5)(C) that believes the person is or may be adversely affected or aggrieved by action taken by the Commission under this section, shall have the opportunity for a prompt hearing after the Commission acts under procedures that the Commission shall establish by rule, regulation, or order.''.

SEC. 107. APPLICATION OF COMMODITY FUTURES LAWS.

Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 3, 4, 4a) is further amended by adding at the end the following:

''(i) APPLICATION OF COMMODITY FUTURES LAWS.—

''(1) No provision of this Act shall be construed as implying or creating any presumption that—

''(A) any agreement, contract, or transaction that is excluded from this Act under section 2(c), 2(d), 2(e), 2(f), or 2(g) of this Act or title IV of the Commodity Futures Modernization Act of 2000, or exempted under section 2(h) or 4(c) of this Act; or

''(B) any agreement, contract, or transaction, not otherwise subject to this Act, that is not so excluded or exempted,

is or would otherwise be subject to this Act.

''(2) No provision of, or amendment made by, the Commodity Futures Modernization Act of 2000 shall be construed as conferring jurisdiction on the Commission with respect to any such agreement, contract, or transaction, except as expressly provided in section 5a of this Act (to the extent provided in section 5a(g) of this Act), 5b of this Act, or 5d of this Act.''.

SEC. 108. PROTECTION OF THE PUBLIC INTEREST.

The Commodity Exchange Act is amended by striking section 3 (7 U.S.C. 5) and inserting the following:

''SEC. 3. FINDINGS AND PURPOSE.

''(a) FINDINGS.—The transactions subject to this Act are entered into regularly in interstate and international commerce and are affected with a national public interest by providing a means for managing and assuming price risks, discovering prices, or disseminating pricing information through trading in liquid, fair and financially secure trading facilities.

''(b) PURPOSE.—It is the purpose of this Act to serve the public interests described in subsection (a) through a system of effective self-regulation of trading facilities, clearing systems, market participants and market professionals under the oversight of the Commission. To foster these public interests, it is further the purpose of this Act to deter and prevent price manipulation or any other disruptions to market integrity; to ensure the financial integrity of all transactions subject to this Act and the avoidance of systemic risk; to protect all market participants from fraudulent or other abusive sales practices and

misuses of customer assets; and to promote responsible innovation and fair competition among boards of trade, other markets and market participants.''.

SEC. 109. PROHIBITED TRANSACTIONS.

Section 4c of the Commodity Exchange Act (7 U.S.C. 6c) is amended by striking ''SEC. 4c.'' and all that follows through subsection (a) and inserting the following:

''SEC. 4c. PROHIBITED TRANSACTIONS.

''(a) IN GENERAL.—

''(1) PROHIBITION.—It shall be unlawful for any person to offer to enter into, enter into, or confirm the execution of a transaction described in paragraph (2) involving the purchase or sale of any commodity for future delivery (or any option on such a transaction or option on a commodity) if the transaction is used or may be used to—

''(A) hedge any transaction in interstate commerce in the commodity or the product or by-product of the commodity;

''(B) determine the price basis of any such transaction in interstate commerce in the commodity; or

''(C) deliver any such commodity sold, shipped, or received in interstate commerce for the execution of the transaction.

''(2) TRANSACTION.—A transaction referred to in paragraph (1) is a transaction that—

''(A)(i) is, is of the character of, or is commonly known to the trade as, a 'wash sale' or 'accommodation trade'; or

''(ii) is a fictitious sale; or

''(B) is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price.''.

SEC. 110. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

The Commodity Exchange Act is amended—

(1) by redesignating section 5b (7 U.S.C. 7b) as section 5e; and

(2) by striking sections 5 and 5a (7 U.S.C. 7, 7a) and inserting the following:

''SEC. 5. DESIGNATION OF BOARDS OF TRADE AS CONTRACT MARKETS.

''(a) APPLICATIONS.—A board of trade applying to the Commission for designation as a contract market shall submit an application to the Commission that includes any relevant materials and records the Commission may require consistent with this Act.

''(b) CRITERIA FOR DESIGNATION.—

''(1) IN GENERAL.—To be designated as a contract market, the board of trade shall demonstrate to the Commission that the board of trade meets the criteria specified in this subsection.

''(2) PREVENTION OF MARKET MANIPULATION.—The board of trade shall have the capacity to prevent market manipulation through market surveillance, compliance, and enforcement practices and procedures, including methods for conducting real-time monitoring of trading and comprehensive and accurate trade reconstructions.

''(3) FAIR AND EQUITABLE TRADING.—The board of trade shall establish and enforce trading rules to ensure fair and equitable trading through the facilities of the contract market, and the capacity to detect, investigate, and discipline any person that violates the rules. The rules may authorize—

''(A) transfer trades or office trades;

''(B) an exchange of—

''(i) futures in connection with a cash commodity transaction;

''(ii) futures for cash commodities; or

''(iii) futures for swaps; or

''(C) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the contract market or a derivatives clearing organization.

''(4) TRADE EXECUTION FACILITY.—The board of trade shall—

''(A) establish and enforce rules defining, or specifications detailing, the manner of operation of the trade execution facility maintained by the board of trade, including rules or specifications describing the operation of any electronic matching platform; and

''(B) demonstrate that the trade execution facility operates in accordance with the rules or specifications.

''(5) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce rules and procedures for ensuring the financial integrity of transactions entered into by or through the facilities of the contract market, including the clearance and settlement of the transactions with a derivatives clearing organization.

''(6) DISCIPLINARY PROCEDURES.—The board of trade shall establish and enforce disciplinary procedures that authorize the board of trade to discipline, suspend, or expel members or market participants that violate the rules of the board of trade, or similar methods for performing the same functions, including delegation of the functions to third parties.

''(7) PUBLIC ACCESS.—The board of trade shall provide the public with access to the rules, regulations, and contract specifications of the board of trade.

''(8) ABILITY TO OBTAIN INFORMATION.—The board of trade shall establish and enforce rules that will allow the board of trade to obtain any necessary information to perform any of the functions described in this subsection, including the capacity to carry out such international information-sharing agreements as the Commission may require.

''(c) EXISTING CONTRACT MARKETS.—A board of trade that is designated as a contract market on the date of the enactment of the Commodity Futures Modernization Act of 2000 shall be considered to be a designated contract market under this section.

''(d) CORE PRINCIPLES FOR CONTRACT MARKETS.—

''(1) IN GENERAL.—To maintain the designation of a board of trade as a contract market, the board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which it complies with the core principles.

''(2) COMPLIANCE WITH RULES.—The board of trade shall monitor and enforce compliance with the rules of the contract market, including the terms and conditions of any contracts to be traded and any limitations on access to the contract market.

''(3) CONTRACTS NOT READILY SUBJECT TO MANIPULATION.—The board of trade shall list on the contract market only contracts that are not readily susceptible to manipulation.

''(4) MONITORING OF TRADING.—The board of trade shall monitor trading to prevent manipulation, price distortion, and disruptions of the delivery or cash-settlement process.

''(5) POSITION LIMITATIONS OR ACCOUNTABILITY.—To reduce the potential threat of market manipulation or congestion, especially during trading in the delivery month, the board of trade shall adopt position limitations or position accountability for speculators, where necessary and appropriate.

''(6) EMERGENCY AUTHORITY.—The board of trade shall adopt rules to provide for the exercise of emergency authority, in consultation or cooperation with the Commission, where necessary and appropriate, including the authority to—

''(A) liquidate or transfer open positions in any contract;

''(B) suspend or curtail trading in any contract; and

''(C) require market participants in any contract to meet special margin requirements.

''(7) AVAILABILITY OF GENERAL INFORMATION.—The board of trade shall make available to market authorities, market participants, and the public information concerning—

''(A) the terms and conditions of the contracts of the contract market; and

''(B) the mechanisms for executing transactions on or through the facilities of the contract market.

''(8) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for actively traded contracts on the contract market.

''(9) EXECUTION OF TRANSACTIONS.—The board of trade shall provide a competitive, open, and efficient market and mechanism for executing transactions.

''(10) TRADE INFORMATION.—The board of trade shall maintain rules and procedures to provide for the recording and safe storage of all identifying trade information in a manner that enables the contract market to use the information for purposes of assisting in the prevention of customer and market abuses and providing evidence of any violations of the rules of the contract market.

''(11) FINANCIAL INTEGRITY OF CONTRACTS.—The board of trade shall establish and enforce rules providing for the financial integrity of any contracts traded on the contract market (including the clearance and settlement of the transactions with a derivatives clearing organization), and rules to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

''(12) PROTECTION OF MARKET PARTICIPANTS.—The board of trade shall establish and enforce rules to protect market participants from abusive practices committed by any party acting as an agent for the participants.

''(13) DISPUTE RESOLUTION.—The board of trade shall establish and enforce rules regarding and provide facilities for alternative dispute resolution as appropriate for market participants and any market intermediaries.

''(14) GOVERNANCE FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members of the contract market, and any other persons with direct access to the facility (including any parties affiliated with any of the persons described in this paragraph).

''(15) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decisionmaking process of the contract market and establish a process for resolving such conflicts of interest.

''(16) COMPOSITION OF BOARDS OF MUTUALLY OWNED CONTRACT MARKETS.—In the case of a mutually owned contract market, the board of trade shall ensure that the composition of the governing board reflects market participants.

''(17) RECORDKEEPING.—The board of trade shall maintain records of all activities related to the business of the contract market in a form and manner acceptable to the Commission for a period of 5 years.

''(18) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—

''(A) adopting any rules or taking any actions that result in any unreasonable restraints of trade; or

''(B) imposing any material anticompetitive burden on trading on the contract market.

''(e) CURRENT AGRICULTURAL COMMODITIES.—

''(1) Subject to paragraph (2) of this subsection, a contract for purchase or sale for future delivery of an agricultural commodity enumerated in section 1a(4) that is available for trade on a contract market, as of the date of the enactment of this subsection, may be traded only on a contract market designated under this section.

''(2) In order to promote responsible economic or financial innovation and fair competition, the Commission, on application by any person,

after notice and public comment and opportunity for hearing, may prescribe rules and regulations to provide for the offer and sale of contracts for future delivery or options on such contracts to be conducted on a derivatives transaction execution facility.''.

SEC. 111. DERIVATIVES TRANSACTION EXECUTION FACILITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5 (as amended by section 110(2)) the following:

''SEC. 5a. DERIVATIVES TRANSACTION EXECUTION FACILITIES.

''(a) IN GENERAL.—In lieu of compliance with the contract market designation requirements of sections 4(a) and 5, a board of trade may elect to operate as a registered derivatives transaction execution facility if the facility is—

''(1) designated as a contract market and meets the requirements of this section; or

''(2) registered as a derivatives transaction execution facility under subsection (c) of this section.

''(b) REQUIREMENTS FOR TRADING.—

''(1) IN GENERAL.—A registered derivatives transaction execution facility under subsection (a) may trade any contract of sale of a commodity for future delivery (or option on such a contract) on or through the facility only by satisfying the requirements of this section.

''(2) REQUIREMENTS FOR UNDERLYING COMMODITIES.—A registered derivatives transaction execution facility may trade any contract of sale of a commodity for future delivery (or option on such a contract) only if—

''(A) the underlying commodity has a nearly inexhaustible deliverable supply;

''(B) the underlying commodity has a deliverable supply that is sufficiently large that the contract is highly unlikely to be susceptible to the threat of manipulation;

''(C) the underlying commodity has no cash market;

''(D)(i) the contract is a security futures product, and (ii) the registered derivatives transaction execution facility is a national securities exchange registered under the Securities Exchange Act of 1934;

''(E) the Commission determines, based on the market characteristics, surveillance history, self-regulatory record, and capacity of the facility that trading in the contract (or option) is highly unlikely to be susceptible to the threat of manipulation; or

''(F) except as provided in section 5(e)(2), the underlying commodity is a commodity other than an agricultural commodity enumerated in section 1a(4), and trading access to the facility is limited to eligible commercial entities trading for their own account.

''(3) ELIGIBLE TRADERS.—To trade on a registered derivatives transaction execution facility, a person shall—

''(A) be an eligible contract participant; or

''(B) be a person trading through a futures commission merchant that—

''(i) is registered with the Commission;

''(ii) is a member of a futures self-regulatory organization or, if the person trades only security futures products on the facility, a national securities association registered under section 15A(a) of the Securities Exchange Act of 1934;

''(iii) is a clearing member of a derivatives clearing organization; and

''(iv) has net capital of at least $20,000,000.

''(4) TRADING BY CONTRACT MARKETS.—A board of trade that is designated as a contract market shall, to the extent that the contract market also operates a registered derivatives transaction execution facility—

''(A) provide a physical location for the contract market trading of the board of trade that is separate from trading on the derivatives transaction execution facility of the board of trade; or

''(B) if the board of trade uses the same electronic trading system for trading on the contract market and derivatives transaction execution facility of the board of trade, identify whether the electronic trading is taking place on the contract market or the derivatives transaction execution facility.

''(c) CRITERIA FOR REGISTRATION.—

''(1) IN GENERAL.—To be registered as a registered derivatives transaction execution facility, the board of trade shall be required to demonstrate to the Commission only that the board of trade meets the criteria specified in subsection (b) and this subsection.

''(2) DETERRENCE OF ABUSES.—The board of trade shall establish and enforce trading and participation rules that will deter abuses and has the capacity to detect, investigate, and enforce those rules, including means to—

''(A) obtain information necessary to perform the functions required under this section; or

''(B) use technological means to—

''(i) provide market participants with impartial access to the market; and

''(ii) capture information that may be used in establishing whether rule violations have occurred.

''(3) TRADING PROCEDURES.—The board of trade shall establish and enforce rules or terms and conditions defining, or specifications detailing, trading procedures to be used in entering and executing orders traded on the facilities of the board of trade. The rules may authorize—

''(A) transfer trades or office trades;

''(B) an exchange of—

''(i) futures in connection with a cash commodity transaction;

''(ii) futures for cash commodities; or

''(iii) futures for swaps; or

''(C) a futures commission merchant, acting as principal or agent, to enter into or confirm the execution of a contract for the purchase or sale of a commodity for future delivery if the contract is reported, recorded, or cleared in accordance with the rules of the registered derivatives transaction execution facility or a derivatives clearing organization.

''(4) FINANCIAL INTEGRITY OF TRANSACTIONS.—The board of trade shall establish and enforce rules or terms and conditions providing for the financial integrity of transactions entered on or through the facilities of the board of trade, and rules or terms and conditions to ensure the financial integrity of any futures commission merchants and introducing brokers and the protection of customer funds.

''(d) CORE PRINCIPLES FOR REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.—

''(1) IN GENERAL.—To maintain the registration of a board of trade as a derivatives transaction execution facility, a board of trade shall comply with the core principles specified in this subsection. The board of trade shall have reasonable discretion in establishing the manner in which the board of trade complies with the core principles.

''(2) COMPLIANCE WITH RULES.—The board of trade shall monitor and enforce the rules of the facility, including any terms and conditions of any contracts traded on or through the facility and any limitations on access to the facility.

''(3) MONITORING OF TRADING.—The board of trade shall monitor trading in the contracts of the facility to ensure orderly trading in the contract and to maintain an orderly market while providing any necessary trading information to the Commission to allow the Commission to discharge the responsibilities of the Commission under the Act.

''(4) DISCLOSURE OF GENERAL INFORMATION.—The board of trade shall disclose publicly and to the Commission information concerning—

''(A) contract terms and conditions;

''(B) trading conventions, mechanisms, and practices;

''(C) financial integrity protections; and

''(D) other information relevant to participation in trading on the facility.

''(5) DAILY PUBLICATION OF TRADING INFORMATION.—The board of trade shall make public daily information on settlement prices, volume, open interest, and opening and closing ranges for contracts traded on the facility if the Commission determines that the contracts perform a significant price discovery function for transactions in the cash market for the commodity underlying the contracts.

''(6) FITNESS STANDARDS.—The board of trade shall establish and enforce appropriate fitness standards for directors, members of any disciplinary committee, members, and any other persons with direct access to the facility, including any parties affiliated with any of the persons described in this paragraph.

''(7) CONFLICTS OF INTEREST.—The board of trade shall establish and enforce rules to minimize conflicts of interest in the decision making process of the derivatives transaction execution facility and establish a process for resolving such conflicts of interest.

''(8) RECORDKEEPING.—The board of trade shall maintain records of all activities related to the business of the derivatives transaction execution facility in a form and manner acceptable to the Commission for a period of 5 years.

''(9) ANTITRUST CONSIDERATIONS.—Unless necessary or appropriate to achieve the purposes of this Act, the board of trade shall endeavor to avoid—

''(A) adopting any rules or taking any actions that result in any unreasonable restraint of trade; or

''(B) imposing any material anticompetitive burden on trading on the derivatives transaction execution facility.

''(e) USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDIT SYSTEM INSTITUTIONS AS INTERMEDIARIES.—

''(1) IN GENERAL.—With respect to transactions other than transactions in security futures products, a registered derivatives transaction execution facility may by rule allow a broker-dealer, depository institution, or institution of the Farm Credit System that meets the requirements of paragraph (2) to—

''(A) act as an intermediary in transactions executed on the facility on behalf of customers of the broker-dealer, depository institution, or institution of the Farm Credit System; and

''(B) receive funds of customers to serve as margin or security for the transactions.

''(2) REQUIREMENTS.—The requirements referred to in paragraph (1) are that—

''(A) the broker-dealer be in good standing with the Securities and Exchange Commission, or the depository institution or institution of the Farm Credit System be in good standing with Federal bank regulatory agencies (including the Farm Credit Administration), as applicable; and

''(B) if the broker-dealer, depository institution, or institution of the Farm Credit System carries or holds customer accounts or funds for transactions on the derivatives transaction execution facility for more than 1 business day, the broker-dealer, depository institution, or institution of the Farm Credit System is registered as a futures commission merchant and is a member of a registered futures association.

''(3) IMPLEMENTATION.—The Commission shall cooperate and coordinate with the Securities and Exchange Commission, the Secretary of the Treasury, and Federal banking regulatory agencies (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to facilitate the implementation of this subsection.

''(f) SEGREGATION OF CUSTOMER FUNDS.—Not later than 180 days after the date of the enactment of the Commodity Futures Modernization Act of 2000, consistent with regulations adopted by the Commission, a registered derivatives transaction execution facility may authorize a futures commission merchant to offer any customer of the futures commission merchant that is an eligible contract participant the right to not segregate the customer funds of the customer that are carried with the futures commission merchant for purposes of trading on or

through the facilities of the registered derivatives transaction execution facility.

''(g) ELECTION TO TRADE EXCLUDED AND EXEMPT COMMODITIES.—

''(1) IN GENERAL.—Notwithstanding subsection (b)(2) of this section, a board of trade that is or elects to become a registered derivatives transaction execution facility may trade on the facility any agreements, contracts, or transactions involving excluded or exempt commodities other than securities, except contracts of sale for future delivery of exempt securities under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982, that are otherwise excluded from this Act under section 2(c), 2(d), or 2(g) of this Act, or exempt under section 2(h) of this Act.

''(2) EXCLUSIVE JURISDICTION OF THE COMMISSION.—The Commission shall have exclusive jurisdiction over agreements, contracts, or transactions described in paragraph (1) to the extent that the agreements, contracts, or transactions are traded on a derivatives transaction execution facility.''.

SEC. 112. DERIVATIVES CLEARING.

(a) IN GENERAL.—Subtitle A of title IV of the Federal Deposit Insurance Corporation Improvement Act of 1991 is amended—

(1) by inserting before the section heading for section 401, the following new heading:

''CHAPTER 1—BILATERAL AND CLEARING ORGANIZATION NETTING'';

(2) in section 402, by striking ''this subtitle'' and inserting ''this chapter''; and

(3) by inserting after section 407, the following new chapter:

''CHAPTER 2—MULTILATERAL CLEARING ORGANIZATIONS

''SEC. 408. DEFINITIONS.

For purposes of this chapter, the following definitions shall apply:

''(1) MULTILATERAL CLEARING ORGANIZATION.—The term 'multilateral clearing organization' means a system utilized by more than 2 participants in which the bilateral credit exposures of participants arising from the transactions cleared are effectively eliminated and replaced by a system of guarantees, insurance, or mutualized risk of loss.

''(2) OVER-THE-COUNTER DERIVATIVE INSTRUMENT.—The term 'over-the-counter derivative instrument' includes—

''(A) any agreement, contract, or transaction, including the terms and conditions incorporated by reference in any such agreement, contract, or transaction, which is an interest rate swap, option, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, and forward rate agreement; a same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, or forward agreement; an equity index or equity swap, option, or forward agreement; a debt index or debt swap, option, or forward agreement; a credit spread or credit swap, option, or forward agreement; a commodity index or commodity swap, option, or forward agreement; and a weather swap, weather derivative, or weather option;

''(B) any agreement, contract or transaction similar to any other agreement, contract, or transaction referred to in this clause that is presently, or in the future becomes, regularly entered into by parties that participate in swap transactions (including terms and conditions incorporated by reference in the agreement) and that is a forward, swap, or option on 1 or more occurrences of any event, rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic or other indices or measures of economic or other risk or value;

''(C) any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f), or 2(g) of such Act, or exempted under section 2(h) or 4(c) of such Act; and

''(D) any option to enter into any, or any combination of, agreements, contracts or transactions referred to in this subparagraph.

''(3) OTHER DEFINITIONS.—The terms 'insured State nonmember bank', 'State member bank', and 'affiliate' have the same meanings as in section 3 of the Federal Deposit Insurance Act.

''SEC. 409. MULTILATERAL CLEARING ORGANIZATIONS.

''(a) IN GENERAL.—Except with respect to clearing organizations described in subsection (b), no person may operate a multilateral clearing organization for over-the-counter derivative instruments, or otherwise engage in activities that constitute such a multilateral clearing organization unless the person is a national bank, a State member bank, an insured State nonmember bank, an affiliate of a national bank, a State member bank, or an insured State nonmember bank, or a corporation chartered under section 25A of the Federal Reserve Act.

''(b) CLEARING ORGANIZATIONS.—Subsection (a) shall not apply to any clearing organization that—

''(1) is registered as a clearing agency under the Securities Exchange Act of 1934;

''(2) is registered as a derivatives clearing organization under the Commodity Exchange Act; or

''(3) is supervised by a foreign financial regulator that the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission, or the Commodity Futures Trading Commission, as applicable, has determined satisfies appropriate standards.''.

(b) RESOLUTION OF CLEARING BANKS.—The Federal Reserve Act (12 U.S.C. 221 et seq.) is amended by inserting after section 9A the following new section:

''SEC. 9B. RESOLUTION OF CLEARING BANKS.

''(a) CONSERVATORSHIP OR RECEIVERSHIP.—

''(1) APPOINTMENT.—The Board may appoint a conservator or receiver to take possession and control of any uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank.

''(2) POWERS.—The conservator or receiver for an uninsured State member bank referred to in paragraph (1) shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

''(b) BOARD AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed under subsection (a), and the uninsured State member bank for which the conservator or receiver has been appointed, as the Comptroller of the Currency has with respect to a conservator or receiver for a national bank and the national bank for which the conservator or receiver has been appointed.

''(c) BANKRUPTCY PROCEEDINGS.—The Board (in the case of an uninsured State member bank which operates, or operates as, such a multilateral clearing organization) may direct a conservator or receiver appointed for the bank to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the bank in lieu of otherwise applicable Federal or State insolvency law.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS TO TITLE 11, UNITED STATES CODE.—

(1) BANKRUPTCY CODE DEBTORS.—Section 109(b)(2) of title 11, United States Code, is amended by striking ''; or'' and inserting the following: '', except that an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor if a petition is filed at the direction of the Board of Governors of the Federal Reserve System; or''.

(2) CHAPTER 7 DEBTORS.—Section 109(d) of title 11, United States Code, is amended to read as follows:

''(d) Only a railroad, a person that may be a debtor under chapter 7 of this title (except a stockbroker or a commodity broker), and an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991 may be a debtor under chapter 11 of this title.''.

(3) DEFINITION OF FINANCIAL INSTITUTION.—Section 101(22) of title 11, United States Code, is amended to read as follows:

''(22) the term 'financial institution'—

''(A) means—

''(i) a Federal reserve bank or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator, or entity is acting as agent or custodian for a customer in connection with a securities contract, as defined in section 741 of this title, the customer; or

''(ii) in connection with a securities contract, as defined in section 741 of this title, an investment company registered under the Investment Company Act of 1940; and

''(B) includes any person described in subparagraph (A) which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991;''.

(4) DEFINITION OF UNINSURED STATE MEMBER BANK.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (54) the following new paragraph—

''(54A) the term 'uninsured State member bank' means a State member bank (as defined in section 3 of the Federal Deposit Insurance Act) the deposits of which are not insured by the Federal Deposit Insurance Corporation; and''.

(5) SUBCHAPTER V OF CHAPTER 7.—

(A) IN GENERAL.—Section 103 of title 11, United States Code, is amended—

(i) by redesignating subsections (e) through (i) as subsections (f) through (j), respectively; and

(ii) by inserting after subsection (d) the following new subsection:

''(e) SCOPE OF APPLICATION.—Subchapter V of chapter 7 of this title shall apply only in a case under such chapter concerning the liquidation of an uninsured State member bank, or a corporation organized under section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(B) CLEARING BANK LIQUIDATION.—Chapter 7 of title 11, United States Code, is amended by adding at the end the following new subchapter:

''SUBCHAPTER V—CLEARING BANK LIQUIDATION

''§ 781. Definitions

''For purposes of this subchapter, the following definitions shall apply:

''(1) BOARD.—The term 'Board' means the Board of Governors of the Federal Reserve System.

''(2) DEPOSITORY INSTITUTION.—The term 'depository institution' has the same meaning as in section 3 of the Federal Deposit Insurance Act.

''(3) CLEARING BANK.—The term 'clearing bank' means an uninsured State member bank, or a corporation organized under section 25A of

the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of the Federal Deposit Insurance Corporation Improvement Act of 1991.

''§ 782. Selection of trustee

''(a) IN GENERAL.—

''(1) APPOINTMENT.—Notwithstanding any other provision of this title, the conservator or receiver who files the petition shall be the trustee under this chapter, unless the Board designates an alternative trustee.

''(2) SUCCESSOR.—The Board may designate a successor trustee if required.

''(b) AUTHORITY OF TRUSTEE.—Whenever the Board appoints or designates a trustee, chapter 3 and sections 704 and 705 of this title shall apply to the Board in the same way and to the same extent that they apply to a United States trustee.

''§ 783. Additional powers of trustee

''(a) DISTRIBUTION OF PROPERTY NOT OF THE ESTATE.—The trustee under this subchapter has power to distribute property not of the estate, including distributions to customers that are mandated by subchapters III and IV of this chapter.

''(b) DISPOSITION OF INSTITUTION.—The trustee under this subchapter may, after notice and a hearing—

''(1) sell the clearing bank to a depository institution or consortium of depository institutions (which consortium may agree on the allocation of the clearing bank among the consortium);

''(2) merge the clearing bank with a depository institution;

''(3) transfer contracts to the same extent as could a receiver for a depository institution under paragraphs (9) and (10) of section 11(e) of the Federal Deposit Insurance Act;

''(4) transfer assets or liabilities to a depository institution;

''(5) transfer assets and liabilities to a bridge bank as provided in paragraphs (1), (3)(A), (5), (6), of section 11(n) of the Federal Deposit Insurance Act, paragraphs (9) through (13) of such section, and subparagraphs (A) through (H) and subparagraph (K) of paragraph (4) of such section 11(n), except that—

''(A) the bridge bank to which such assets or liabilities are transferred shall be treated as a clearing bank for the purpose of this subsection; and

''(B) any references in any such provision of law to the Federal Deposit Insurance Corporation shall be construed to be references to the appointing agency and that references to deposit insurance shall be omitted.

''(c) CERTAIN TRANSFERS INCLUDED.—Any reference in this section to transfers of liabilities includes a ratable transfer of liabilities within a priority class.

''§ 784. Right to be heard

''The Board or a Federal reserve bank (in the case of a clearing bank that is a member of that bank) may raise and may appear and be heard on any issue in a case under this subchapter.''.

(6) DEFINITIONS OF CLEARING ORGANIZATION, CONTRACT MARKET, AND RELATED DEFINITIONS.—

(A) Section 761(2) of title 11, United States Code, is amended to read as follows:

''(2) 'clearing organization' means a derivatives clearing organization registered under the Act;''.

(B) Section 761(7) of title 11, United States Code, is amended to read as follows:

''(7) 'contract market' means a registered entity;''.

(C) Section 761(8) of title 11, United States Code, is amended to read as follows:

''(8) 'contract of sale', 'commodity', 'derivatives clearing organization', 'future delivery', 'board of trade', 'registered entity', and 'futures commission merchant' have the meanings assigned to those terms in the Act;''.

(d) CLERICAL AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by adding at the end the following new items:

''SUBCHAPTER V—CLEARING BANK LIQUIDATION

''Sec.
''781. Definitions.
''782. Selection of trustee.
''783. Additional powers of trustee.
''784. Right to be heard.''.

(e) RESOLUTION OF EDGE ACT CORPORATIONS.—The 16th undesignated paragraph of section 25A of the Federal Reserve Act (12 U.S.C. 624) is amended to read as follows:

''(16) APPOINTMENT OF RECEIVER OR CONSERVATOR.—

''(A) IN GENERAL.—The Board may appoint a conservator or receiver for a corporation organized under the provisions of this section to the same extent and in the same manner as the Comptroller of the Currency may appoint a conservator or receiver for a national bank, and the conservator or receiver for such corporation shall exercise the same powers, functions, and duties, subject to the same limitations, as a conservator or receiver for a national bank.

''(B) EQUIVALENT AUTHORITY.—The Board shall have the same authority with respect to any conservator or receiver appointed for a corporation organized under the provisions of this section under this paragraph and any such corporation as the Comptroller of the Currency has with respect to a conservator or receiver of a national bank and the national bank for which a conservator or receiver has been appointed.

''(C) TITLE 11 PETITIONS.—The Board may direct the conservator or receiver of a corporation organized under the provisions of this section to file a petition pursuant to title 11, United States Code, in which case, title 11, United States Code, shall apply to the corporation in lieu of otherwise applicable Federal or State insolvency law.''.

(f) DERIVATIVES CLEARING ORGANIZATIONS.—The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5a, as added by section 111 of this Act, the following:

''SEC. 5b. DERIVATIVES CLEARING ORGANIZATIONS.

''(a) REGISTRATION REQUIREMENT.—It shall be unlawful for a derivatives clearing organization, unless registered with the Commission, directly or indirectly to make use of the mails or any means or instrumentality of interstate commerce to perform the functions of a derivatives clearing organization described in section 1a(9) of this Act with respect to a contract of sale of a commodity for future delivery (or option on such a contract) or option on a commodity, in each case unless the contract or option—

''(1) is excluded from this Act by section 2(a)(1)(C)(i), 2(c), 2(d), 2(f), or 2(g) of this Act or title IV of the Commodity Futures Modernization Act of 2000, or exempted under section 2(h) or 4(c) of this Act; or

''(2) is a security futures product cleared by a clearing agency registered under the Securities Exchange Act of 1934.

''(b) VOLUNTARY REGISTRATION.—A derivatives clearing organization that clears agreements, contracts, or transactions excluded from this Act by section 2(c), 2(d), 2(f) or 2(g) of this Act or title IV of the Commodity Futures Modernization Act of 2000, or exempted under section 2(h) or 4(c) of this Act, or other over-the-counter derivative instruments (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991) may register with the Commission as a derivatives clearing organization.

''(c) REGISTRATION OF DERIVATIVES CLEARING ORGANIZATIONS.—

''(1) APPLICATION.—A person desiring to register as a derivatives clearing organization shall submit to the Commission an application in such form and containing such information as the Commission may require for the purpose of making the determinations required for approval under paragraph (2).

''(2) CORE PRINCIPLES.—

''(A) IN GENERAL.—To be registered and to maintain registration as a derivatives clearing organization, an applicant shall demonstrate to the Commission that the applicant complies with the core principles specified in this paragraph. The applicant shall have reasonable discretion in establishing the manner in which it complies with the core principles.

''(B) FINANCIAL RESOURCES.—The applicant shall demonstrate that the applicant has adequate financial, operational, and managerial resources to discharge the responsibilities of a derivatives clearing organization.

''(C) PARTICIPANT AND PRODUCT ELIGIBILITY.—The applicant shall establish—

''(i) appropriate admission and continuing eligibility standards (including appropriate minimum financial requirements) for members of and participants in the organization; and

''(ii) appropriate standards for determining eligibility of agreements, contracts, or transactions submitted to the applicant.

''(D) RISK MANAGEMENT.—The applicant shall have the ability to manage the risks associated with discharging the responsibilities of a derivatives clearing organization through the use of appropriate tools and procedures.

''(E) SETTLEMENT PROCEDURES.—The applicant shall have the ability to—

''(i) complete settlements on a timely basis under varying circumstances;

''(ii) maintain an adequate record of the flow of funds associated with each transaction that the applicant clears; and

''(iii) comply with the terms and conditions of any permitted netting or offset arrangements with other clearing organizations.

''(F) TREATMENT OF FUNDS.—The applicant shall have standards and procedures designed to protect and ensure the safety of member and participant funds.

''(G) DEFAULT RULES AND PROCEDURES.—The applicant shall have rules and procedures designed to allow for efficient, fair, and safe management of events when members or participants become insolvent or otherwise default on their obligations to the derivatives clearing organization.

''(H) RULE ENFORCEMENT.—The applicant shall—

''(i) maintain adequate arrangements and resources for the effective monitoring and enforcement of compliance with rules of the applicant and for resolution of disputes; and

''(ii) have the authority and ability to discipline, limit, suspend, or terminate a member's or participant's activities for violations of rules of the applicant.

''(I) SYSTEM SAFEGUARDS.—The applicant shall demonstrate that the applicant—

''(i) has established and will maintain a program of oversight and risk analysis to ensure that the automated systems of the applicant function properly and have adequate capacity and security; and

''(ii) has established and will maintain emergency procedures and a plan for disaster recovery, and will periodically test backup facilities sufficient to ensure daily processing, clearing, and settlement of transactions.

''(J) REPORTING.—The applicant shall provide to the Commission all information necessary for the Commission to conduct the oversight function of the applicant with respect to the activities of the derivatives clearing organization.

''(K) RECORDKEEPING.—The applicant shall maintain records of all activities related to the business of the applicant as a derivatives clearing organization in a form and manner acceptable to the Commission for a period of 5 years.

''(L) PUBLIC INFORMATION.—The applicant shall make information concerning the rules and operating procedures governing the clearing and settlement systems (including default procedures) available to market participants.

''(M) INFORMATION SHARING.—The applicant shall—

''(i) enter into and abide by the terms of all appropriate and applicable domestic and international information-sharing agreements; and

''(ii) use relevant information obtained from the agreements in carrying out the clearing organization's risk management program.

''(N) ANTITRUST CONSIDERATIONS.—Unless appropriate to achieve the purposes of this Act, the derivatives clearing organization shall avoid—

''(i) adopting any rule or taking any action that results in any unreasonable restraint of trade; or

''(ii) imposing any material anticompetitive burden on trading on the contract market.

''(3) ORDERS CONCERNING COMPETITION.—A derivatives clearing organization may request the Commission to issue an order concerning whether a rule or practice of the applicant is the least anticompetitive means of achieving the objectives, purposes, and policies of this Act.

''(d) EXISTING DERIVATIVES CLEARING ORGANIZATIONS.—A derivatives clearing organization shall be deemed to be registered under this section to the extent that the derivatives clearing organization clears agreements, contracts, or transactions for a board of trade that has been designated by the Commission as a contract market for such agreements, contracts, or transactions before the date of enactment of this section.

''(e) APPOINTMENT OF TRUSTEE.—

''(1) IN GENERAL.—If a proceeding under section 5e results in the suspension or revocation of the registration of a derivatives clearing organization, or if a derivatives clearing organization withdraws from registration, the Commission, on notice to the derivatives clearing organization, may apply to the appropriate United States district court where the derivatives clearing organization is located for the appointment of a trustee.

''(2) ASSUMPTION OF JURISDICTION.—If the Commission applies for appointment of a trustee under paragraph (1)—

''(A) the court may take exclusive jurisdiction over the derivatives clearing organization and the records and assets of the derivatives clearing organization, wherever located; and

''(B) if the court takes jurisdiction under subparagraph (A), the court shall appoint the Commission, or a person designated by the Commission, as trustee with power to take possession and continue to operate or terminate the operations of the derivatives clearing organization in an orderly manner for the protection of participants, subject to such terms and conditions as the court may prescribe.

''(f) LINKING OF REGULATED CLEARING FACILITIES.—

''(1) IN GENERAL.—The Commission shall facilitate the linking or coordination of derivatives clearing organizations registered under this Act with other regulated clearance facilities for the coordinated settlement of cleared transactions.

''(2) COORDINATION.—In carrying out paragraph (1), the Commission shall coordinate with the Federal banking agencies and the Securities and Exchange Commission.''.

SEC. 113. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5b (as added by section 112(f)) the following:

''SEC. 5c. COMMON PROVISIONS APPLICABLE TO REGISTERED ENTITIES.

''(a) ACCEPTABLE BUSINESS PRACTICES UNDER CORE PRINCIPLES.—

''(1) IN GENERAL.—Consistent with the purposes of this Act, the Commission may issue interpretations, or approve interpretations submitted to the Commission, of sections 5(d), 5a(d), and 5b(d)(2) to describe what would constitute an acceptable business practice under such sections.

''(2) EFFECT OF INTERPRETATION.—An interpretation issued under paragraph (1) shall not provide the exclusive means for complying with such sections.

''(b) DELEGATION OF FUNCTIONS UNDER CORE PRINCIPLES.—

''(1) IN GENERAL.—A contract market or derivatives transaction execution facility may comply with any applicable core principle through delegation of any relevant function to a registered futures association or another registered entity.

''(2) RESPONSIBILITY.—A contract market or derivatives transaction execution facility that delegates a function under paragraph (1) shall remain responsible for carrying out the function.

''(3) NONCOMPLIANCE.—If a contract market or derivatives transaction execution facility that delegates a function under paragraph (1) becomes aware that a delegated function is not being performed as required under this Act, the contract market or derivatives transaction execution facility shall promptly take steps to address the noncompliance.

''(c) NEW CONTRACTS, NEW RULES, AND RULE AMENDMENTS.—

''(1) IN GENERAL.—Subject to paragraph (2), a registered entity may elect to list for trading or accept for clearing any new contract or other instrument, or may elect to approve and implement any new rule or rule amendment, by providing to the Commission (and the Secretary of the Treasury, in the case of a contract of sale of a government security for future delivery (or option on such a contract) or a rule or rule amendment specifically related to such a contract) a written certification that the new contract or instrument or clearing of the new contract or instrument, new rule, or rule amendment complies with this Act (including regulations under this Act).

''(2) PRIOR APPROVAL.—

''(A) IN GENERAL.—A registered entity may request that the Commission grant prior approval to any new contract or other instrument, new rule, or rule amendment.

''(B) PRIOR APPROVAL REQUIRED.—Notwithstanding any other provision of this section, a designated contract market shall submit to the Commission for prior approval each rule amendment that materially changes the terms and conditions, as determined by the Commission, in any contract of sale for future delivery of a commodity specifically enumerated in section 1a(4) (or any option thereon) traded through its facilities if the rule amendment applies to contracts and delivery months which have already been listed for trading and have open interest.

''(C) DEADLINE.—If prior approval is requested under subparagraph (A), the Commission shall take final action on the request not later than 90 days after submission of the request, unless the person submitting the request agrees to an extension of the time limitation established under this subparagraph.

''(3) APPROVAL.—The Commission shall approve any such new contract or instrument, new rule, or rule amendment unless the Commission finds that the new contract or instrument, new rule, or rule amendment would violate this Act.

''(d) VIOLATION OF CORE PRINCIPLES.—

''(1) IN GENERAL.—If the Commission determines, on the basis of substantial evidence, that a registered entity is violating any applicable core principle specified in section 5(d), 5a(d), or 5b(d)(2), the Commission shall—

''(A) notify the registered entity in writing of the determination; and

''(B) afford the registered entity an opportunity to make appropriate changes to bring the registered entity into compliance with the core principles.

''(2) FAILURE TO MAKE CHANGES.—If, not later than 30 days after receiving a notification under paragraph (1), a registered entity fails to make changes that, in the opinion of the Commission, are necessary to comply with the core principles, the Commission may take further action in accordance with this Act.

''(e) RESERVATION OF EMERGENCY AUTHORITY.—Nothing in this section shall limit or in any way affect the emergency powers of the Commission provided in section 8a(9).''.

SEC. 114. EXEMPT BOARDS OF TRADE.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5c (as added by section 113) the following:

''SEC. 5d. EXEMPT BOARDS OF TRADE.

''(a) ELECTION TO REGISTER WITH THE COMMISSION.—A board of trade that meets the requirements of subsection (b) of this section may operate as an exempt board of trade on receipt from the board of trade of a notice, provided in such manner as the Commission may by rule or regulation prescribe, that the board of trade elects to operate as an exempt board of trade. Except as otherwise provided in this section, no provision of this Act (other than subparagraphs (C) and (D) of section 2(a)(1) and section 12(e)(2)(B)) shall apply with respect to a contract of sale of a commodity for future delivery (or option on such a contract) traded on or through the facilities of an exempt board of trade.

''(b) CRITERIA FOR EXEMPTION.—To qualify for an exemption under subsection (a), a board of trade shall limit trading on or through the facilities of the board of trade to contracts of sale of a commodity for future delivery (or options on such contracts or on a commodity)—

''(1) for which the underlying commodity has—

''(A) a nearly inexhaustible deliverable supply;

''(B) a deliverable supply that is sufficiently large, and a cash market sufficiently liquid, to render any contract traded on the commodity highly unlikely to be susceptible to the threat of manipulation; or

''(C) no cash market;

''(2) that are entered into only between persons that are eligible contract participants at the time at which the persons enter into the contract; and

''(3) that are not contracts of sale (or options on such a contract or on a commodity) for future delivery of any security, including any group or index of securities or any interest in, or based on the value of, any security or any group or index of securities.

''(c) ANTIMANIPULATION REQUIREMENTS.—A party to a contract of sale of a commodity for future delivery (or option on such a contract or on a commodity) that is traded on an exempt board of trade shall be subject to sections 4b, 4c(b), 4o, 6(c), and 9(a)(2), and the Commission shall enforce those provisions with respect to any such trading.

''(d) PRICE DISCOVERY.—If the Commission finds that an exempt board of trade is a significant source of price discovery for transactions in the cash market for the commodity underlying any contract, agreement, or transaction traded on or through the facilities of the board of trade, the board of trade shall disseminate publicly on a daily basis trading volume, opening and closing price ranges, open interest, and other trading data as appropriate to the market.

''(e) JURISDICTION.—The Commission shall have exclusive jurisdiction over any account, agreement, contract, or transaction involving a contract of sale of a commodity for future delivery, or option on such a contract or on a commodity, to the extent that the account, agreement, contract, or transaction is traded on an exempt board of trade.

''(f) SUBSIDIARIES.—A board of trade that is designated as a contract market or registered as a derivatives transaction execution facility may operate an exempt board of trade by establishing a separate subsidiary or other legal entity and otherwise satisfying the requirements of this section.

''(g) An exempt board of trade that meets the requirements of subsection (b) shall not represent to any person that the board of trade is

registered with, or designated, recognized, licensed, or approved by the Commission.''.

SEC. 115. SUSPENSION OR REVOCATION OF DESIGNATION AS CONTRACT MARKET.

Section 5e of the Commodity Exchange Act (7 U.S.C. 7b) (as redesignated by section 20(1)) is amended to read as follows:

''SEC. 5e. SUSPENSION OR REVOCATION OF DESIGNATION AS REGISTERED ENTITY.

''The failure of a registered entity to comply with any provision of this Act, or any regulation or order of the Commission under this Act, shall be cause for the suspension of the registered entity for a period not to exceed 180 days, or revocation of designation as a registered entity in accordance with the procedures and subject to the judicial review provided in section 6(b).''.

SEC. 116. AUTHORIZATION OF APPROPRIATIONS.

Section 12(d) of the Commodity Exchange Act (7 U.S.C. 16(d)) is amended by striking ''2000'' and inserting ''2005''.

SEC. 117. PREEMPTION.

Section 12 of the Commodity Exchange Act (7 U.S.C. 16(e)) is amended by striking subsection (e) and inserting the following:

''(e) RELATION TO OTHER LAW, DEPARTMENTS, OR AGENCIES.—

''(1) Nothing in this Act shall supersede or preempt—

''(A) criminal prosecution under any Federal criminal statute;

''(B) the application of any Federal or State statute (except as provided in paragraph (2)), including any rule or regulation thereunder, to any transaction in or involving any commodity, product, right, service, or interest—

''(i) that is not conducted on or subject to the rules of a registered entity or exempt board of trade;

''(ii) (except as otherwise specified by the Commission by rule or regulation) that is not conducted on or subject to the rules of any board of trade, exchange, or market located outside the United States, its territories or possessions; or

''(iii) that is not subject to regulation by the Commission under section 4c or 19; or

''(C) the application of any Federal or State statute, including any rule or regulation thereunder, to any person required to be registered or designated under this Act who shall fail or refuse to obtain such registration or designation.

''(2) This Act shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—

''(A) an electronic trading facility excluded under section 2(e) of this Act;

''(B) an agreement, contract, or transaction that is excluded from this Act under section 2(c), 2(d), 2(f), or 2(g) of this Act or title IV of the Commodity Futures Modernization Act of 2000, or exempted under section 2(h) or 4(c) of this Act (regardless of whether any such agreement, contract, or transaction is otherwise subject to this Act).''.

SEC. 118. PREDISPUTE RESOLUTION AGREEMENTS FOR INSTITUTIONAL CUSTOMERS.

Section 14 of the Commodity Exchange Act (7 U.S.C. 18) is amended by striking subsection (g) and inserting the following:

''(g) PREDISPUTE RESOLUTION AGREEMENTS FOR INSTITUTIONAL CUSTOMERS.—Nothing in this section prohibits a registered futures commission merchant from requiring a customer that is an eligible contract participant, as a condition to the commission merchant's conducting a transaction for the customer, to enter into an agreement waiving the right to file a claim under this section.''.

SEC. 119. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.

Section 15 of the Commodity Exchange Act (7 U.S.C. 19) is amended by striking ''SEC. 15. The Commission'' and inserting the following:

''SEC. 15. CONSIDERATION OF COSTS AND BENEFITS AND ANTITRUST LAWS.

''(a) COSTS AND BENEFITS.—

''(1) IN GENERAL.—Before promulgating a regulation under this Act or issuing an order (except as provided in paragraph (3)), the Commission shall consider the costs and benefits of the action of the Commission.

''(2) CONSIDERATIONS.—The costs and benefits of the proposed Commission action shall be evaluated in light of—

''(A) considerations of protection of market participants and the public;

''(B) considerations of the efficiency, competitiveness, and financial integrity of futures markets;

''(C) considerations of price discovery;

''(D) considerations of sound risk management practices; and

''(E) other public interest considerations.

''(3) APPLICABILITY.—This subsection does not apply to the following actions of the Commission:

''(A) An order that initiates, is part of, or is the result of an adjudicatory or investigative process of the Commission.

''(B) An emergency action.

''(C) A finding of fact regarding compliance with a requirement of the Commission.

''(b) ANTITRUST LAWS.—The Commission''.

SEC. 120. CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.

Section 22(a) of the Commodity Exchange Act (7 U.S.C. 25(a)) is amended by adding at the end the following:

''(4) CONTRACT ENFORCEMENT BETWEEN ELIGIBLE COUNTERPARTIES.—No agreement, contract, or transaction between eligible contract participants or persons reasonably believed to be eligible contract participants, and no hybrid instrument sold to any investor, shall be void, voidable, or unenforceable, and no such party shall be entitled to rescind, or recover any payment made with respect to, such an agreement, contract, transaction, or instrument under this section or any other provision of Federal or State law, based solely on the failure of the agreement, contract, transaction, or instrument to comply with the terms or conditions of an exemption or exclusion from any provision of this Act or regulations of the Commission.''.

SEC. 121. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.

The Commodity Exchange Act, as otherwise amended by this Act, is amended by inserting after section 4o the following:

''SEC. 4p. SPECIAL PROCEDURES TO ENCOURAGE AND FACILITATE BONA FIDE HEDGING BY AGRICULTURAL PRODUCERS.

''(a) AUTHORITY.—The Commission shall consider issuing rules or orders which—

''(1) prescribe procedures under which each contract market is to provide for orderly delivery, including temporary storage costs, of any agricultural commodity enumerated in section 1a(4) which is the subject of a contract for purchase or sale for future delivery;

''(2) increase the ease with which domestic agricultural producers may participate in contract markets, including by addressing cost and margin requirements, so as to better enable the producers to hedge price risk associated with their production;

''(3) provide flexibility in the minimum quantities of such agricultural commodities that may be the subject of a contract for purchase or sale for future delivery that is traded on a contract market, to better allow domestic agricultural producers to hedge such price risk; and

''(4) encourage contract markets to provide information and otherwise facilitate the participation of domestic agricultural producers in contract markets.

''(b) REPORT.—Within 1 year after the date of enactment of this section, the Commission shall submit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report on the steps it has taken to implement this section and on the activities of contract markets pursuant to this section.''.

SEC. 122. RULE OF CONSTRUCTION.

Except as expressly provided in this Act or an amendment made by this Act, nothing in this Act or an amendment made by this Act supersedes, affects, or otherwise limits or expands the scope and applicability of laws governing the Securities and Exchange Commission.

SEC. 123. TECHNICAL AND CONFORMING AMENDMENTS.

(a) COMMODITY EXCHANGE ACT.—

(1) Section 1a of the Commodity Exchange Act (7 U.S.C. 1a) (as amended by section 101) is amended—

(A) in paragraphs (5), (6), (16), (17), (20), and (23), by inserting ''or derivatives transaction execution facility'' after ''contract market'' each place it appears; and

(B) in paragraph (24)—

(i) in the paragraph heading, by striking ''CONTRACT MARKET'' and inserting ''REGISTERED ENTITY'';

(ii) by striking ''contract market'' each place it appears and inserting ''registered entity''; and

(iii) by adding at the end the following:

''A participant in an alternative trading system that is designated as a contract market pursuant to section 5f is deemed a member of the contract market for purposes of transactions in security futures products through the contract market.''.

(2) Section 2 of the Commodity Exchange Act (7 U.S.C. 2, 2a, 4, 4a, 3) is amended—

(A) by striking ''SEC. 2. (a)(1)(A)(i) The'' and inserting the following:

''SEC. 2. JURISDICTION OF COMMISSION; LIABILITY OF PRINCIPAL FOR ACT OF AGENT; COMMODITY FUTURES TRADING COMMISSION; TRANSACTION IN INTERSTATE COMMERCE.

''(a) JURISDICTION OF COMMISSION; COMMODITY FUTURES TRADING COMMISSION.—

''(1) JURISDICTION OF COMMISSION.—

''(A) IN GENERAL.—The''; and

(B) in subsection (a)(1)—

(i) in subparagraph (A) (as amended by subparagraph (A) of this paragraph)—

(II) by striking ''subparagraph (B) of this subparagraph'' and inserting ''subparagraphs (C) and (D) of this paragraph and subsections (c) through (i) of this section'';

(III) by striking ''contract market designated pursuant to section 5 of this Act'' and inserting ''contract market designated or derivatives transaction execution facility registered pursuant to section 5 or 5a'';

(IV) by striking clause (ii); and

(V) in clause (iii), by striking ''(iii) The'' and inserting the following:

''(B) LIABILITY OF PRINCIPAL FOR ACT OF AGENT.—The''; and

(ii) in subparagraph (B)—

(I) by striking ''(B)'' and inserting ''(C)'';

(II) in clause (v)—

(aa) by striking ''section 3 of the Securities Act of 1933''; and

(bb) by inserting ''or subparagraph (D)'' after ''subparagraph''; and

(III) by moving clauses (i) through (v) 4 ems to the right;

(C) in subsection (a)(7), by striking ''contract market'' and inserting ''registered entity'';

(D) in subsection (a)(8)(B)(ii)—

(i) in the first sentence, by striking ''designation as a contract market'' and inserting ''designation or registration as a contract market or derivatives transaction execution facility'';

(ii) in the second sentence, by striking ''designate a board of trade as a contract market'' and inserting ''designate or register a board of trade as a contract market or derivatives transaction execution facility''; and

(iii) in the fourth sentence, by striking ''designating, or refusing, suspending, or revoking the

designation of, a board of trade as a contract market involving transactions for future delivery referred to in this clause or in considering possible emergency action under section 8a(9) of this Act'' and inserting ''designating, registering, or refusing, suspending, or revoking the designation or registration of, a board of trade as a contract market or derivatives transaction execution facility involving transactions for future delivery referred to in this clause or in considering any possible action under this Act (including without limitation emergency action under section 8a(9))'', and by striking ''designation, suspension, revocation, or emergency action'' and inserting ''designation, registration, suspension, revocation, or action''; and

(E) in subsection (a), by moving paragraphs (2) through (9) 2 ems to the right.

(3) Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended—

(A) in subsection (a)—

(i) in paragraph (1), by striking ''designated by the Commission as a 'contract market' for'' and inserting ''designated or registered by the Commission as a contract market or derivatives transaction execution facility for'';

(ii) in paragraph (2), by striking ''member of such''; and

(iii) in paragraph (3), by inserting ''or derivatives transaction execution facility'' after ''contract market''; and

(B) in subsection (c)—

(i) in paragraph (1)—

(I) by striking ''designated as a contract market'' and inserting ''designated or registered as a contract market or derivatives transaction execution facility''; and

(II) by striking ''section 2(a)(1)(B)'' and inserting ''subparagraphs (C)(ii) and (D) of section 2(a)(1), except that the Commission and the Securities and Exchange Commission may by rule, regulation, or order jointly exclude any agreement, contract, or transaction from section 2(a)(1)(D)''; and

(ii) in paragraph (2)(B)(ii), by inserting ''or derivatives transaction execution facility'' after ''contract market''.

(4) Section 4a of the Commodity Exchange Act (7 U.S.C. 6a) is amended—

(A) in subsection (a)—

(i) in the first sentence, by inserting ''or derivatives transaction execution facilities'' after ''contract markets''; and

(ii) in the second sentence, by inserting ''or derivatives transaction execution facility'' after ''contract market'';

(B) in subsection (b)—

(i) in paragraph (1), by inserting '', or derivatives transaction execution facility or facilities,'' after ''markets''; and

(ii) in paragraph (2), by inserting ''or derivatives transaction execution facility'' after ''contract market''; and

(C) in subsection (e)—

(i) by striking ''contract market or'' each place it appears and inserting ''contract market, derivatives transaction execution facility, or'';

(ii) by striking ''licensed or designated'' each place it appears and inserting ''licensed, designated, or registered''; and

(iii) by striking ''contract market, or'' and inserting ''contract market or derivatives transaction execution facility, or''.

(5) Section 4b(a) of the Commodity Exchange Act (7 U.S.C. 6b(a)) is amended by striking ''contract market'' each place it appears and inserting ''registered entity''.

(6) Sections 4c(g), 4d, 4e, and 4f of the Commodity Exchange Act (7 U.S.C. 6c(g), 6d, 6e, 6f) are amended by inserting ''or derivatives transaction execution facility'' after ''contract market'' each place it appears.

(7) Section 4g of the Commodity Exchange Act (7 U.S.C. 6g) is amended—

(A) in subsection (b), by striking ''clearinghouse and contract market'' and inserting ''registered entity''; and

(B) in subsection (f), by striking ''clearinghouses, contract markets, and exchanges'' and inserting ''registered entities''.

(8) Section 4h of the Commodity Exchange Act (7 U.S.C. 6h) is amended by striking ''contract market'' each place it appears and inserting ''registered entity''.

(9) Section 4i of the Commodity Exchange Act (7 U.S.C. 6i) is amended in the first sentence by inserting ''or derivatives transaction execution facility'' after ''contract market''.

(10) Section 4l of the Commodity Exchange Act (7 U.S.C. 6l) is amended by inserting ''or derivatives transaction execution facilities'' after ''contract markets'' each place it appears.

(11) Section 4p of the Commodity Exchange Act (7 U.S.C. 6p) is amended—

(A) in the third sentence of subsection (a), by striking ''Act or contract markets'' and inserting ''Act, contract markets, or derivatives transaction execution facilities''; and

(B) in subsection (b), by inserting ''derivatives transaction execution facility,'' after ''contract market,''.

(12) Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended—

(A) in subsection (a)—

(i) in the first sentence—

(I) by striking ''board of trade desiring to be designated a 'contract market' shall make application to the Commission for such designation'' and inserting ''person desiring to be designated or registered as a contract market or derivatives transaction execution facility shall make application to the Commission for the designation or registration'';

(II) by striking ''above conditions'' and inserting ''conditions set forth in this Act''; and

(III) by striking ''above requirements'' and inserting ''the requirements of this Act'';

(ii) in the second sentence, by striking ''designation as a contract market within one year'' and inserting ''designation or registration as a contract market or derivatives transaction execution facility within 180 days'';

(iii) in the third sentence—

(I) by striking ''board of trade'' and inserting ''person''; and

(II) by striking ''one-year period'' and inserting ''180-day period''; and

(iv) in the last sentence, by striking ''designate as a 'contract market' any board of trade that has made application therefor, such board of trade'' and inserting ''designate or register as a contract market or derivatives transaction execution facility any person that has made application therefor, the person'';

(B) in subsection (b)—

(i) in the first sentence—

(I) by striking ''designation of any board of trade as a 'contract market' upon'' and inserting ''designation or registration of any contract market or derivatives transaction execution facility on'';

(II) by striking ''board of trade'' each place it appears and inserting ''contract market or derivatives transaction execution facility''; and

(III) by striking ''designation as set forth in section 5 of this Act'' and inserting ''designation or registration as set forth in sections 5 through 5b or section 5f'';

(ii) in the second sentence—

(I) by striking ''board of trade'' the first place it appears and inserting ''contract market or derivatives transaction execution facility''; and

(II) by striking ''board of trade'' the second and third places it appears and inserting ''person''; and

(iii) in the last sentence, by striking ''board of trade'' each place it appears and inserting ''person'';

(C) in subsection (c)—

(i) by striking ''contract market'' each place it appears and inserting ''registered entity'';

(ii) by striking ''contract markets'' each place it appears and inserting ''registered entities''; and

(iii) by striking ''trading privileges'' each place it appears and inserting ''privileges'';

(D) in subsection (d), by striking ''contract market'' each place it appears and inserting ''registered entity''; and

(E) in subsection (e), by striking ''trading on all contract markets'' each place it appears and inserting ''the privileges of all registered entities''.

(13) Section 6a of the Commodity Exchange Act (7 U.S.C. 10a) is amended—

(A) in the first sentence of subsection (a), by striking ''designated as a 'contract market' shall'' and inserting ''designated or registered as a contract market or a derivatives transaction execution facility''; and

(B) in subsection (b), by striking ''designated as a contract market'' and inserting ''designated or registered as a contract market or a derivatives transaction execution facility''.

(14) Section 6b of the Commodity Exchange Act (7 U.S.C. 13a) is amended—

(A) by striking ''contract market'' each place it appears and inserting ''registered entity'';

(B) in the first sentence, by striking ''designation as set forth in section 5 of this Act'' and inserting ''designation or registration as set forth in sections 5 through 5c''; and

(C) in the last sentence, by striking ''the contract market's ability'' and inserting ''the ability of the registered entity''.

(15) Section 6c(a) of the Commodity Exchange Act (7 U.S.C. 13a–1(a)) by striking ''contract market'' and inserting ''registered entity''.

(16) Section 6d(1) of the Commodity Exchange Act (7 U.S.C. 13a–2(1)) is amended by inserting ''derivatives transaction execution facility,'' after ''contract market,''.

(17) Section 7 of the Commodity Exchange Act (7 U.S.C. 11) is amended—

(A) in the first sentence—

(i) by striking ''board of trade'' and inserting ''person'';

(ii) by inserting ''or registered'' after ''designated'';

(iii) by inserting ''or registration'' after ''designation'' each place it appears; and

(iv) by striking ''contract market'' each place it appears and inserting ''registered entity'';

(B) in the second sentence—

(i) by striking ''designation of such board of trade as a contract market'' and inserting ''designation or registration of the registered entity''; and

(ii) by striking ''contract markets'' and inserting ''registered entities''; and

(C) in the last sentence—

(i) by striking ''board of trade'' and inserting ''person''; and

(ii) by striking ''designated again a contract market'' and inserting ''designated or registered again a registered entity''.

(18) Section 8(c) of the Commodity Exchange Act (7 U.S.C. 12(c)) is amended in the first sentence by striking ''board of trade'' and inserting ''registered entity''.

(19) Section 8a of the Commodity Exchange Act (7 U.S.C. 12a) is amended—

(A) by striking ''contract market'' each place it appears and inserting ''registered entity''; and

(B) in paragraph (2)(F), by striking ''trading privileges'' and inserting ''privileges''.

(20) Sections 8b and 8c(e) of the Commodity Exchange Act (7 U.S.C. 12b, 12c(e)) are amended by striking ''contract market'' each place it appears and inserting ''registered entity''.

(21) Section 8e of the Commodity Exchange Act (7 U.S.C. 12e) is repealed.

(22) Section 9 of the Commodity Exchange Act (7 U.S.C. 13) is amended by striking ''contract market'' each place it appears and inserting ''registered entity''.

(23) Section 14 of the Commodity Exchange Act (7 U.S.C. 18) is amended—

(A) in subsection (a)(1)(B), by striking ''contract market'' and inserting ''registered entity''; and

(B) in subsection (f), by striking ''contract markets'' and inserting ''registered entities''.

(24) Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended by striking ''contract market'' each place it appears and inserting ''registered entity''.

(25) Section 22 of the Commodity Exchange Act (7 U.S.C. 25) is amended—

(A) in subsection (a)—

(i) in paragraph (1)—

(I) by striking ''contract market, clearing organization of a contract market, licensed board of trade,'' and inserting ''registered entity''; and

(II) in subparagraph (C)(i), by striking ''contract market'' and inserting ''registered entity'';

(ii) in paragraph (2), by striking ''sections 5a(11),'' and inserting ''sections 5(d)(13), 5b(b)(1)(E),''; and

(iii) in paragraph (3), by striking ''contract market'' and inserting ''registered entity''; and

(B) in subsection (b)—

(i) in paragraph (1)—

(I) by striking ''contract market or clearing organization of a contract market'' and inserting ''registered entity'';

(II) by striking ''section 5a(8) and section 5a(9) of this Act'' and inserting ''sections 5 through 5c'';

(III) by striking ''contract market, clearing organization of a contract market, or licensed board of trade'' and inserting ''registered entity''; and

(IV) by striking ''contract market or licensed board of trade'' and inserting ''registered entity'';

(ii) in paragraph (3)—

(I) by striking ''a contract market, clearing organization, licensed board of trade,'' and inserting ''registered entity''; and

(II) by striking ''contract market, licensed board of trade'' and inserting ''registered entity'';

(iii) in paragraph (4), by striking ''contract market, licensed board of trade, clearing organization,'' and inserting ''registered entity''; and

(iv) in paragraph (5), by striking ''contract market, licensed board of trade, clearing organization,'' and inserting ''registered entity''.

(b) FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.—Section 402(2) of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402(2)) is amended by striking subparagraph (B) and inserting the following:

''(B) that is registered as a derivatives clearing organization under section 5b of the Commodity Exchange Act.''.

SEC. 124. PRIVACY.

The Commodity Exchange Act (7 U.S.C. 1 et seq.) is amended by inserting after section 5f (as added by section 252) the following:

''SEC. 5g. PRIVACY.

''(a) TREATMENT AS FINANCIAL INSTITUTIONS.—Notwithstanding section 509(3)(B) of the Gramm-Leach-Bliley Act, any futures commission merchant, commodity trading advisor, commodity pool operator, or introducing broker that is subject to the jurisdiction of the Commission under this Act with respect to any financial activity shall be treated as a financial institution for purposes of title V of such Act with respect to such financial activity.

''(b) TREATMENT OF CFTC AS FEDERAL FUNCTIONAL REGULATOR.—For purposes of title V of such Act, the Commission shall be treated as a Federal functional regulator within the meaning of section 509(2) of such Act and shall prescribe regulations under such title within 6 months after the date of enactment of this section.''.

SEC. 125. REPORT TO CONGRESS.

(a) The Commodity Futures Trading Commission (in this section referred to as the ''Commission'') shall undertake and complete a study of the Commodity Exchange Act (in this section referred to as ''the Act'') and the Commission's rules, regulations and orders governing the conduct of persons required to be registered under the Act, not later than 1 year after the date of the enactment of this Act. The study shall identify—

(1) the core principles and interpretations of acceptable business practices that the Commission has adopted or intends to adopt to replace the provisions of the Act and the Commission's rules and regulations thereunder;

(2) the rules and regulations that the Commission has determined must be retained and the reasons therefor;

(3) the extent to which the Commission believes it can effect the changes identified in paragraph (1) of this subsection through its exemptive authority under section 4(c) of the Act; and

(4) the regulatory functions the Commission currently performs that can be delegated to a registered futures association (within the meaning of the Act) and the regulatory functions that the Commission has determined must be retained and the reasons therefor.

(b) In conducting the study, the Commission shall solicit the views of the public as well as Commission registrants, registered entities, and registered futures associations (all within the meaning of the Act).

(c) The Commission shall transmit to the Committee on Agriculture of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a report of the results of its study, which shall include an analysis of comments received.

SEC. 126. INTERNATIONAL ACTIVITIES OF THE COMMODITY FUTURES TRADING COMMISSION.

(a) FINDINGS.—The Congress finds that—

(1) derivatives markets serving United States industry are increasingly global in scope;

(2) developments in data processing and communications technologies enable users of risk management services to analyze and compare those services on a worldwide basis;

(3) financial services regulatory policy must be flexible to account for rapidly changing derivatives industry business practices;

(4) regulatory impediments to the operation of global business interests can compromise the competitiveness of United States businesses;

(5) events that disrupt financial markets and economies are often global in scope, require rapid regulatory response, and coordinated regulatory effort across international jurisdictions;

(6) through its membership in the International Organisation of Securities Commissions, the Commodity Futures Trading Commission has promoted beneficial communication among market regulators and international regulatory cooperation; and

(7) the Commodity Futures Trading Commission and other United States financial regulators and self-regulatory organizations should continue to foster productive and cooperative working relationships with their counterparts in foreign jurisdictions.

(b) SENSE OF THE CONGRESS.—It is the sense of the Congress that, consistent with its responsibilities under the Commodity Exchange Act, the Commodity Futures Trading Commission should, as part of its international activities, continue to coordinate with foreign regulatory authorities, to participate in international regulatory organizations and forums, and to provide technical assistance to foreign government authorities, in order to encourage—

(1) the facilitation of cross-border transactions through the removal or lessening of any unnecessary legal or practical obstacles;

(2) the development of internationally accepted regulatory standards of best practice;

(3) the enhancement of international supervisory cooperation and emergency procedures;

(4) the strengthening of international cooperation for customer and market protection; and

(5) improvements in the quality and timeliness of international information sharing.

TITLE II—COORDINATED REGULATION OF SECURITY FUTURES PRODUCTS

Subtitle A—Securities Law Amendments

SEC. 201. DEFINITIONS UNDER THE SECURITIES EXCHANGE ACT OF 1934.

Section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) is amended—

(1) in paragraph (10), by inserting ''security future,'' after ''treasury stock,'';

(2) by striking paragraph (11) and inserting the following:

''(11) The term 'equity security' means any stock or similar security; or any security future on any such security; or any security convertible, with or without consideration, into such a security, or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the Commission shall deem to be of similar nature and consider necessary or appropriate, by such rules and regulations as it may prescribe in the public interest or for the protection of investors, to treat as an equity security.'';

(3) in paragraph (13), by adding at the end the following: ''For security futures products, such term includes any contract, agreement, or transaction for future delivery.'';

(4) in paragraph (14), by adding at the end the following: ''For security futures products, such term includes any contract, agreement, or transaction for future delivery.''; and

(5) by adding at the end the following:

''(55)(A) The term 'security future' means a contract of sale for future delivery of a single security or of a narrow-based security index, including any interest therein or based on the value thereof, except an exempted security under section 3(a)(12) of the Securities Exchange Act of 1934 as in effect on the date of enactment of the Futures Trading Act of 1982 (other than any municipal security as defined in section 3(a)(29) as in effect on the date of enactment of the Futures Trading Act of 1982). The term 'security future' does not include any agreement, contract, or transaction excluded from the Commodity Exchange Act under section 2(c), 2(d), 2(f) or 2(g) of the Commodity Exchange Act (as in effect on the date of enactment of the Commodity Futures Modernization Act of 2000) or title IV of the Commodity Futures Modernization Act of 2000.

''(B) The term 'narrow-based security index' means an index—

''(i) that has 9 or fewer component securities;

''(ii) in which a component security comprises more than 30 percent of the index's weighting;

''(iii) in which the 5 highest weighted component securities in the aggregate comprise more than 60 percent of the index's weighting; or

''(iv) in which the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting have an aggregate dollar value of average daily trading volume of less than $50,000,000 (or in the case of an index with 15 or more component securities, $30,000,000), except that if there are two or more securities with equal weighting that could be included in the calculation of the lowest weighted component securities comprising, in the aggregate, 25 percent of the index's weighting, such securities shall be ranked from lowest to highest dollar value of average daily trading volume and shall be included in the calculation based on their ranking starting with the lowest ranked security.

''(C) Notwithstanding subparagraph (B), an index is not a narrow-based security index if—

''(i)(I) it has at least 9 component securities;

''(II) no component security comprises more than 30 percent of the index's weighting; and

''(III) each component security is—

''(aa) registered pursuant to section 12 of the Securities Exchange Act of 1934;

''(bb) 1 of 750 securities with the largest market capitalization; and

''(cc) 1 of 675 securities with the largest dollar value of average daily trading volume;

''(ii) a board of trade was designated as a contract market by the Commodity Futures Trading Commission with respect to a contract of sale for future delivery on the index, before the date of enactment of the Commodity Futures Modernization Act of 2000;

''(iii)(I) a contract of sale for future delivery on the index traded on a designated contract

market or registered derivatives transaction execution facility for at least 30 days as a contract of sale for future delivery on an index that was not a narrow-based security index; and

''(II) it has been a narrow-based security index for no more than 45 business days over 3 consecutive calendar months;

''(iv) a contract of sale for future delivery on the index is traded on or subject to the rules of a foreign board of trade and meets such requirements as are jointly established by rule or regulation by the Commission and the Commodity Futures Trading Commission;

''(v) no more than 18 months have passed since the date of enactment of the Commodity Futures Modernization Act of 2000 and—

''(I) it is traded on or subject to the rules of a foreign board of trade;

''(II) the offer and sale in the United States of a contract of sale for future delivery on the index was authorized before the date of the enactment of the Commodity Futures Modernization Act of 2000; and

''(III) the conditions of such authorization continue to be met; or

''(vi) a contract of sale for future delivery on the index is traded on or subject to the rules of a board of trade and meets such requirements as are jointly established by rule, regulation, or order by the Commission and the Commodity Futures Trading Commission.

''(D) Within 1 year after the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Commodity Futures Trading Commission jointly shall adopt rules or regulations that set forth the requirements under clause (iv) of subparagraph (C).

''(E) An index that is a narrow-based security index solely because it was a narrow-based security index for more than 45 business days over 3 consecutive calendar months pursuant to clause (iii) of subparagraph (C) shall not be a narrow-based security index for the 3 following calendar months.

''(F) For purposes of subparagraphs (B) and (C) of this paragraph—

''(i) the dollar value of average daily trading volume and the market capitalization shall be calculated as of the preceding 6 full calendar months; and

''(ii) the Commission and the Commodity Futures Trading Commission shall, by rule or regulation, jointly specify the method to be used to determine market capitalization and dollar value of average daily trading volume.

''(56) The term 'security futures product' means a security future or any put, call, straddle, option, or privilege on any security future.

''(57)(A) The term 'margin', when used with respect to a security futures product, means the amount, type, and form of collateral required to secure any extension or maintenance of credit, or the amount, type, and form of collateral required as a performance bond related to the purchase, sale, or carrying of a security futures product.

''(B) The terms 'margin level' and 'level of margin', when used with respect to a security futures product, mean the amount of margin required to secure any extension or maintenance of credit, or the amount of margin required as a performance bond related to the purchase, sale, or carrying of a security futures product.

''(C) The terms 'higher margin level' and 'higher level of margin', when used with respect to a security futures product, mean a margin level established by a national securities exchange registered pursuant to section 6(g) that is higher than the minimum amount established and in effect pursuant to section 7(c)(2)(B).''.

SEC. 202. REGULATORY RELIEF FOR MARKETS TRADING SECURITY FUTURES PRODUCTS.

(a) EXPEDITED REGISTRATION AND EXEMPTION.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding at the end the following:

''(g) NOTICE REGISTRATION OF SECURITY FUTURES PRODUCT EXCHANGES.—

''(1) REGISTRATION REQUIRED.—An exchange that lists or trades security futures products may register as a national securities exchange solely for the purposes of trading security futures products if—

''(A) the exchange is a board of trade, as that term is defined by the Commodity Exchange Act (7 U.S.C. 1a(2)), that—

''(i) has been designated a contract market by the Commodity Futures Trading Commission and such designation is not suspended by order of the Commodity Futures Trading Commission; or

''(ii) is registered as a derivative transaction execution facility under section 5a of the Commodity Exchange Act and such registration is not suspended by the Commodity Futures Trading Commission; and

''(B) such exchange does not serve as a market place for transactions in securities other than—

''(i) security futures products; or

''(ii) futures on exempted securities or groups or indexes of securities or options thereon that have been authorized under section 2(a)(1)(C) of the Commodity Exchange Act.

''(2) REGISTRATION BY NOTICE FILING.—

''(A) FORM AND CONTENT.—An exchange required to register only because such exchange lists or trades security futures products may register for purposes of this section by filing with the Commission a written notice in such form as the Commission, by rule, may prescribe containing the rules of the exchange and such other information and documents concerning such exchange, comparable to the information and documents required for national securities exchanges under section 6(a), as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. If such exchange has filed documents with the Commodity Futures Trading Commission, to the extent that such documents contain information satisfying the Commission's informational requirements, copies of such documents may be filed with the Commission in lieu of the required written notice.

''(B) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if such registration would be subject to suspension or revocation.

''(C) TERMINATION.—Such registration shall be terminated immediately if any of the conditions for registration set forth in this subsection are no longer satisfied.

''(3) PUBLIC AVAILABILITY.—The Commission shall promptly publish in the Federal Register an acknowledgment of receipt of all notices the Commission receives under this subsection and shall make all such notices available to the public.

''(4) EXEMPTION OF EXCHANGES FROM SPECIFIED PROVISIONS.—

''(A) TRANSACTION EXEMPTIONS.—An exchange that is registered under paragraph (1) of this subsection shall be exempt from, and shall not be required to enforce compliance by its members with, and its members shall not, solely with respect to those transactions effected on such exchange in security futures products, be required to comply with, the following provisions of this title and the rules thereunder:

''(i) Subsections (b)(2), (b)(3), (b)(4), (b)(7), (b)(9), (c), (d), and (e) of this section.

''(ii) Section 8.

''(iii) Section 11.

''(iv) Subsections (d), (f), and (k) of section 17.

''(v) Subsections (a), (f), and (h) of section 19.

''(B) RULE CHANGE EXEMPTIONS.—An exchange that registered under paragraph (1) of this subsection shall also be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

''(i) such exchange shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such exchange's obligation to enforce the securities laws pursuant to section 19(b)(7);

''(ii) such exchange shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

''(iii) such exchange shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

''(5) TRADING IN SECURITY FUTURES PRODUCTS.—

''(A) IN GENERAL.—Subject to subparagraph (B), it shall be unlawful for any person to execute or trade a security futures product until the later of—

''(i) 1 year after the date of enactment of the Commodity Futures Modernization Act of 2000; or

''(ii) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.

''(B) PRINCIPAL-TO-PRINCIPAL TRANSACTIONS.—Notwithstanding subparagraph (A), a person may execute or trade a security futures product transaction if—

''(i) the transaction is entered into—

''(I) on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of the Commodity Exchange Act; and

''(II) only between eligible contract participants (as defined in subparagraphs (A), (B)(ii), and (C) of such section 1a(12)) at the time at which the persons enter into the agreement, contract, or transaction; and

''(ii) the transaction is entered into on or after the later of—

''(I) 8 months after the date of enactment of the Commodity Futures Modernization Act of 2000; or

''(II) such date that a futures association registered under section 17 of the Commodity Exchange Act has met the requirements set forth in section 15A(k)(2) of this title.''.

(b) COMMISSION REVIEW OF PROPOSED RULE CHANGES.—

(1) EXPEDITED REVIEW.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by adding at the end the following:

''(7) SECURITY FUTURES PRODUCT RULE CHANGES.—

''(A) FILING REQUIRED.—A self-regulatory organization that is an exchange registered with the Commission pursuant to section 6(g) of this title or that is a national securities association registered pursuant to section 15A(k) of this title shall file with the Commission, in accordance with such rules as the Commission may prescribe, copies of any proposed rule change or any proposed change in, addition to, or deletion from the rules of such self-regulatory organization (hereinafter in this paragraph collectively referred to as a 'proposed rule change') that relates to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for security futures products for persons who effect transactions in security futures products, or rules effectuating such self-regulatory organization's obligation to enforce the securities laws. Such proposed rule change shall be accompanied by a concise general statement of the basis and purpose of such proposed rule change. The Commission shall, upon the filing of any proposed rule change, promptly publish notice thereof together with the terms of substance of the proposed rule change or a description of the subjects and issues involved. The Commission shall give interested persons an opportunity to submit data,

views, and arguments concerning such proposed rule change.

''(B) FILING WITH CFTC.—A proposed rule change filed with the Commission pursuant to subparagraph (A) shall be filed concurrently with the Commodity Futures Trading Commission. Such proposed rule change may take effect upon filing of a written certification with the Commodity Futures Trading Commission under section 5c(c) of the Commodity Exchange Act, upon a determination by the Commodity Futures Trading Commission that review of the proposed rule change is not necessary, or upon approval of the proposed rule change by the Commodity Futures Trading Commission.

''(C) ABROGATION OF RULE CHANGES.—Any proposed rule change of a self-regulatory organization that has taken effect pursuant to subparagraph (B) may be enforced by such self-regulatory organization to the extent such rule is not inconsistent with the provisions of this title, the rules and regulations thereunder, and applicable Federal law. At any time within 60 days of the date of the filing of a written certification with the Commodity Futures Trading Commission under section 5c(c) of the Commodity Exchange Act, the date the Commodity Futures Trading Commission determines that review of such proposed rule change is not necessary, or the date the Commodity Futures Trading Commission approves such proposed rule change, the Commission, after consultation with the Commodity Futures Trading Commission, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of paragraph (1), if it appears to the Commission that such proposed rule change unduly burdens competition or efficiency, conflicts with the securities laws, or is inconsistent with the public interest and the protection of investors. Commission action pursuant to the preceding sentence shall not affect the validity or force of the rule change during the period it was in effect and shall not be reviewable under section 25 of this title nor deemed to be a final agency action for purposes of section 704 of title 5, United States Code.

''(D) REVIEW OF RESUBMITTED ABROGATED RULES.—

''(i) PROCEEDINGS.—Within 35 days of the date of publication of notice of the filing of a proposed rule change that is abrogated in accordance with subparagraph (C) and refiled in accordance with paragraph (1), or within such longer period as the Commission may designate up to 90 days after such date if the Commission finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall—

''(I) by order approve such proposed rule change; or

''(II) after consultation with the Commodity Futures Trading Commission, institute proceedings to determine whether the proposed rule change should be disapproved. Proceedings under subclause (II) shall include notice of the grounds for disapproval under consideration and opportunity for hearing and be concluded within 180 days after the date of publication of notice of the filing of the proposed rule change. At the conclusion of such proceedings, the Commission, by order, shall approve or disapprove such proposed rule change. The Commission may extend the time for conclusion of such proceedings for up to 60 days if the Commission finds good cause for such extension and publishes its reasons for so finding or for such longer period as to which the self-regulatory organization consents.

''(ii) GROUNDS FOR APPROVAL.—The Commission shall approve a proposed rule change of a self-regulatory organization under this subparagraph if the Commission finds that such proposed rule change does not unduly burden competition or efficiency, does not conflict with the securities laws, and is not inconsistent with the public interest or the protection of investors. The Commission shall disapprove such a proposed rule change of a self-regulatory organization if it does not make such finding. The Commission shall not approve any proposed rule change prior to the 30th day after the date of publication of notice of the filing thereof, unless the Commission finds good cause for so doing and publishes its reasons for so finding.''.

(2) DECIMAL PRICING PROVISIONS.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by inserting after paragraph (7), as added by paragraph (1), the following:

''(8) DECIMAL PRICING.—Not later than 9 months after the date on which trading in any security futures product commences under this title, all self-regulatory organizations listing or trading security futures products shall file proposed rule changes necessary to implement decimal pricing of security futures products. The Commission may not require such rules to contain equal minimum increments in such decimal pricing.''.

(3) CONSULTATION PROVISIONS.—Section 19(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(b)) is amended by inserting after paragraph (8), as added by paragraph (2), the following:

''(9) CONSULTATION WITH CFTC.—

''(A) CONSULTATION REQUIRED.—The Commission shall consult with and consider the views of the Commodity Futures Trading Commission prior to approving or disapproving a proposed rule change filed by a national securities association registered pursuant to section 15A(a) or a national securities exchange subject to the provisions of subsection (a) that primarily concerns conduct related to transactions in security futures products, except where the Commission determines that an emergency exists requiring expeditious or summary action and publishes its reasons therefor.

''(B) RESPONSES TO CFTC COMMENTS AND FINDINGS.—If the Commodity Futures Trading Commission comments in writing to the Commission on a proposed rule that has been published for comment, the Commission shall respond in writing to such written comment before approving or disapproving the proposed rule. If the Commodity Futures Trading Commission determines, and notifies the Commission, that such rule, if implemented or as applied, would—

''(i) adversely affect the liquidity or efficiency of the market for security futures products; or

''(ii) impose any burden on competition not necessary or appropriate in furtherance of the purposes of this section,

the Commission shall, prior to approving or disapproving the proposed rule, find that such rule is necessary and appropriate in furtherance of the purposes of this section notwithstanding the Commodity Futures Trading Commission's determination.''.

(c) REVIEW OF DISCIPLINARY PROCEEDINGS.—Section 19(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78s(d)) is amended by adding at the end the following:

''(3) The provisions of this subsection shall apply to an exchange registered pursuant to section 6(g) of this title or a national securities association registered pursuant to section 15A(k) of this title only to the extent that such exchange or association imposes any final disciplinary sanction for—

''(A) a violation of the Federal securities laws or the rules and regulations thereunder; or

''(B) a violation of a rule of such exchange or association, as to which a proposed change would be required to be filed under section 19 of this title, except that, to the extent that the exchange or association rule violation relates to any account, agreement, contract, or transaction, this subsection shall apply only to the extent such violation involves a security futures product.''.

SEC. 203. REGULATORY RELIEF FOR INTERMEDIARIES TRADING SECURITY FUTURES PRODUCTS.

(a) EXPEDITED REGISTRATION AND EXEMPTIONS.—

(1) AMENDMENT.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by adding at the end the following:

''(11) BROKER/DEALER REGISTRATION WITH RESPECT TO TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—

''(A) NOTICE REGISTRATION.—

''(i) CONTENTS OF NOTICE.—Notwithstanding paragraphs (1) and (2), a broker or dealer required to register only because it effects transactions in security futures products on an exchange registered pursuant to section 6(g) may register for purposes of this section by filing with the Commission a written notice in such form and containing such information concerning such broker or dealer and any persons associated with such broker or dealer as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors. A broker or dealer may not register under this paragraph unless that broker or dealer is a member of a national securities association registered under section 15A(k).

''(ii) IMMEDIATE EFFECTIVENESS.—Such registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission, except that such registration shall not be effective if the registration would be subject to suspension or revocation under paragraph (4).

''(iii) SUSPENSION.—Such registration shall be suspended immediately if a national securities association registered pursuant to section 15A(k) of this title suspends the membership of that broker or dealer.

''(iv) TERMINATION.—Such registration shall be terminated immediately if any of the above stated conditions for registration set forth in this paragraph are no longer satisfied.

''(B) EXEMPTIONS FOR REGISTERED BROKERS AND DEALERS.—A broker or dealer registered pursuant to the requirements of subparagraph (A) shall be exempt from the following provisions of this title and the rules thereunder with respect to transactions in security futures products:

''(i) Section 8.

''(ii) Section 11.

''(iii) Subsections (c)(3) and (c)(5) of this section.

''(iv) Section 15B.

''(v) Section 15C.

''(vi) Subsections (d), (e), (f), (g), (h), and (i) of section 17.''.

(2) CONFORMING AMENDMENT.—Section 28(e) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(e)) is amended by adding at the end the following:

''(4) The provisions of this subsection shall not apply with regard to securities that are security futures products.''.

(b) FLOOR BROKERS AND FLOOR TRADERS.—Section 15(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)) is amended by inserting after paragraph (11), as added by subsection (a), the following:

''(12) EXEMPTION FOR SECURITY FUTURES PRODUCT EXCHANGE MEMBERS.—

''(A) REGISTRATION EXEMPTION.—A natural person shall be exempt from the registration requirements of this section if such person—

''(i) is a member of a designated contract market registered with the Commission as an exchange pursuant to section 6(g);

''(ii) effects transactions only in securities on the exchange of which such person is a member; and

''(iii) does not directly accept or solicit orders from public customers or provide advice to public customers in connection with the trading of security futures products.

''(B) OTHER EXEMPTIONS.—A natural person exempt from registration pursuant to subparagraph (A) shall also be exempt from the following provisions of this title and the rules thereunder:

''(i) Section 8.

''(ii) Section 11.

''(iii) Subsections (c)(3), (c)(5), and (e) of this section.

''(iv) Section 15B.

''(v) Section 15C.

''(vi) Subsections (d), (e), (f), (g), (h), and (i) of section 17.''.

(c) LIMITED PURPOSE NATIONAL SECURITIES ASSOCIATION.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by adding at the end the following:

''(k) LIMITED PURPOSE NATIONAL SECURITIES ASSOCIATION.—

''(1) REGULATION OF MEMBERS WITH RESPECT TO SECURITY FUTURES PRODUCTS.—A futures association registered under section 17 of the Commodity Exchange Act shall be a registered national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products pursuant to section 15(b)(11).

''(2) REQUIREMENTS FOR REGISTRATION.—Such a securities association shall—

''(A) be so organized and have the capacity to carry out the purposes of the securities laws applicable to security futures products and to comply, and (subject to any rule or order of the Commission pursuant to section 19(g)(2)) to enforce compliance by its members and persons associated with its members, with the provisions of the securities laws applicable to security futures products, the rules and regulations thereunder, and its rules;

''(B) have rules that—

''(i) are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, including rules governing sales practices and the advertising of security futures products reasonably comparable to those of other national securities associations registered pursuant to subsection (a) that are applicable to security futures products; and

''(ii) are not designed to regulate by virtue of any authority conferred by this title matters not related to the purposes of this title or the administration of the association;

''(C) have rules that provide that (subject to any rule or order of the Commission pursuant to section 19(g)(2)) its members and persons associated with its members shall be appropriately disciplined for violation of any provision of the securities laws applicable to security futures products, the rules or regulations thereunder, or the rules of the association, by expulsion, suspension, limitation of activities, functions, and operations, fine, censure, being suspended or barred from being associated with a member, or any other fitting sanction; and

''(D) have rules that ensure that members and natural persons associated with members meet such standards of training, experience, and competence necessary to effect transactions in security futures products and are tested for their knowledge of securities and security futures products.

''(3) EXEMPTION FROM RULE CHANGE SUBMISSION.—Such a securities association shall be exempt from submitting proposed rule changes pursuant to section 19(b) of this title, except that—

''(A) the association shall file proposed rule changes related to higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products, sales practices for, advertising of, or standards of training, experience, competence, or other qualifications for security futures products for persons who effect transactions in security futures products, or rules effectuating the association's obligation to enforce the securities laws pursuant to section 19(b)(7);

''(B) the association shall file pursuant to sections 19(b)(1) and 19(b)(2) proposed rule changes related to margin, except for changes resulting in higher margin levels; and

''(C) the association shall file pursuant to section 19(b)(1) proposed rule changes that have been abrogated by the Commission pursuant to section 19(b)(7)(C).

''(4) OTHER EXEMPTIONS.—Such a securities association shall be exempt from and shall not be required to enforce compliance by its members, and its members shall not, solely with respect to their transactions effected in security futures products, be required to comply, with the following provisions of this title and the rules thereunder:

''(A) Section 8.

''(B) Subsections (b)(1), (b)(3), (b)(4), (b)(5), (b)(8), (b)(10), (b)(11), (b)(12), (b)(13), (c), (d), (e), (f), (g), (h), and (i) of this section.

''(C) Subsections (d), (f), and (k) of section 17.

''(D) Subsections (a), (f), and (h) of section 19.''.

(d) EXEMPTION UNDER THE SECURITIES INVESTOR PROTECTION ACT OF 1970.—

(1) Section 16(14) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78lll(14)) is amended by inserting ''or any security future as that term is defined in section 3(a)(55)(A) of the Securities Exchange Act of 1934,'' after ''certificate of deposit for a security,''.

(2) Section 3(a)(2)(A) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)(A)) is amended—

(A) in clause (i), by striking ''and'' after the semicolon;

(B) in clause (ii), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(iii) persons who are registered as a broker or dealer pursuant to section 15(b)(11)(A) of the Securities Exchange Act of 1934.''.

SEC. 204. SPECIAL PROVISIONS FOR INTERAGENCY COOPERATION.

Section 17(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q(b)) is amended—

(1) by striking ''(b) All'' and inserting the following:

''(b) RECORDS SUBJECT TO EXAMINATION.—

''(1) PROCEDURES FOR COOPERATION WITH OTHER AGENCIES.—All'';

(2) by striking ''prior to conducting any such examination of a registered clearing'' and inserting the following: ''prior to conducting any such examination of a—

''(A) registered clearing'';

(3) by redesignating the last sentence as paragraph (4)(C);

(4) by striking the period at the end of the first sentence and inserting the following: ''; or

''(B) broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k) gives notice to the Commodity Futures Trading Commission of such proposed examination and consults with the Commodity Futures Trading Commission concerning the feasibility and desirability of coordinating such examination with examinations conducted by the Commodity Futures Trading Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for such broker or dealer or exchange.'';

(5) by adding at the end the following new paragraphs:

''(2) FURNISHING DATA AND REPORTS TO CFTC.—The Commission shall notify the Commodity Futures Trading Commission of any examination conducted of any broker or dealer registered pursuant to section 15(b)(11), exchange registered pursuant to section 6(g), or national securities association registered pursuant to section 15A(k) and, upon request, furnish to the Commodity Futures Trading Commission any examination report and data supplied to, or prepared by, the Commission in connection with such examination.

''(3) USE OF CFTC REPORTS.—Prior to conducting an examination under paragraph (1), the Commission shall use the reports of examinations, if the information available therein is sufficient for the purposes of the examination, of—

''(A) any broker or dealer registered pursuant to section 15(b)(11);

''(B) exchange registered pursuant to section 6(g); or

''(C) national securities association registered pursuant to section 15A(k);

that is made by the Commodity Futures Trading Commission, a national securities association registered pursuant to section 15A(k), or an exchange registered pursuant to section 6(g).

''(4) RULES OF CONSTRUCTION.—

''(A) Notwithstanding any other provision of this subsection, the records of a broker or dealer registered pursuant to section 15(b)(11), an exchange registered pursuant to section 6(g), or a national securities association registered pursuant to section 15A(k) described in this subparagraph shall not be subject to routine periodic examinations by the Commission.

''(B) Any recordkeeping rules adopted under this subsection for a broker or dealer registered pursuant to section 15(b)(11), an exchange registered pursuant to section 6(g), or a national securities association registered pursuant to section 15A(k) shall be limited to records with respect to persons, accounts, agreements, contracts, and transactions involving security futures products.''; and

(6) in paragraph (4)(C) (as redesignated by paragraph (3) of this section), by striking ''Nothing in the proviso to the preceding sentence'' and inserting ''Nothing in the proviso in paragraph (1)''.

SEC. 205. MAINTENANCE OF MARKET INTEGRITY FOR SECURITY FUTURES PRODUCTS.

(a) ADDITION OF SECURITY FUTURES PRODUCTS TO OPTION-SPECIFIC ENFORCEMENT PROVISIONS.—

(1) PROHIBITION AGAINST MANIPULATION.—Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(b)) is amended—

(A) in paragraph (1)—

(i) by inserting ''(A)'' after ''acquires''; and

(ii) by striking ''; or'' and inserting ''; or (B) any security futures product on the security; or'';

(B) in paragraph (2)—

(i) by inserting ''(A)'' after ''interest in any''; and

(ii) by striking ''; or'' and inserting ''; or (B) such security futures product; or''; and

(C) in paragraph (3)—

(i) by inserting ''(A)'' after ''interest in any''; and

(ii) by inserting ''; or (B) such security futures product'' after ''privilege''.

(2) MANIPULATION IN OPTIONS AND OTHER DERIVATIVE PRODUCTS.—Section 9(g) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(g)) is amended—

(A) by inserting ''(1)'' after ''(g)'';

(B) by inserting ''other than a security futures product'' after ''future delivery''; and

(C) by adding at the end following:

''(2) Notwithstanding the Commodity Exchange Act, the Commission shall have the authority to regulate the trading of any security futures product to the extent provided in the securities laws.''.

(3) LIABILITY OF CONTROLLING PERSONS AND PERSONS WHO AID AND ABET VIOLATIONS.—Section 20(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(d)) is amended by striking ''or privilege'' and inserting '', privilege, or security futures product''.

(4) LIABILITY TO CONTEMPORANEOUS TRADERS FOR INSIDER TRADING.—Section 21A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1(a)(1)) is amended by striking ''standardized options, the Commission—'' and inserting ''standardized options or security futures products, the Commission—''.

(5) ENFORCEMENT CONSULTATION.—Section 21 of the Securities Exchange Act of 1934 (15 U.S.C.

78u) is amended by adding at the end the following:

''(i) INFORMATION TO CFTC.—The Commission shall provide the Commodity Futures Trading Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any broker or dealer registered pursuant to section 15(b)(11), any exchange registered pursuant to section 6(g), or any national securities association registered pursuant to section 15A(k).''.

SEC. 206. SPECIAL PROVISIONS FOR THE TRADING OF SECURITY FUTURES PRODUCTS.

(a) LISTING STANDARDS AND CONDITIONS FOR TRADING.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after subsection (g), as added by section 202, the following:

''(h) TRADING IN SECURITY FUTURES PRODUCTS.—

''(1) TRADING ON EXCHANGE OR ASSOCIATION REQUIRED.—It shall be unlawful for any person to effect transactions in security futures products that are not listed on a national securities exchange or a national securities association registered pursuant to section 15A(a).

''(2) LISTING STANDARDS REQUIRED.—Except as otherwise provided in paragraph (7), a national securities exchange or a national securities association registered pursuant to section 15A(a) may trade only security futures products that (A) conform with listing standards that such exchange or association files with the Commission under section 19(b) and (B) meet the criteria specified in section 2(a)(1)(D)(i) of the Commodity Exchange Act.

''(3) REQUIREMENTS FOR LISTING STANDARDS AND CONDITIONS FOR TRADING.—Such listing standards shall—

''(A) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 12 of this title;

''(B) require that if the security futures product is not cash settled, the market on which the security futures product is traded have arrangements in place with a registered clearing agency for the payment and delivery of the securities underlying the security futures product;

''(C) be no less restrictive than comparable listing standards for options traded on a national securities exchange or national securities association registered pursuant to section 15A(a) of this title;

''(D) except as otherwise provided in a rule, regulation, or order issued pursuant to paragraph (4), require that the security future be based upon common stock and such other equity securities as the Commission and the Commodity Futures Trading Commission jointly determine appropriate;

''(E) require that the security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on one market and offset on another market that trades such product;

''(F) require that only a broker or dealer subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) effect transactions in the security futures product;

''(G) require that the security futures product be subject to the prohibition against dual trading in section 4j of the Commodity Exchange Act (7 U.S.C. 6j) and the rules and regulations thereunder or the provisions of section 11(a) of this title and the rules and regulations thereunder, except to the extent otherwise permitted under this title and the rules and regulations thereunder;

''(H) require that trading in the security futures product not be readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

''(I) require that procedures be in place for coordinated surveillance among the market on which the security futures product is traded, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading;

''(J) require that the market on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (I);

''(K) require that the market on which the security futures product is traded has in place procedures to coordinate trading halts between such market and any market on which any security underlying the security futures product is traded and other markets on which any related security is traded; and

''(L) require that the margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B), except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

''(4) AUTHORITY TO MODIFY CERTAIN LISTING STANDARD REQUIREMENTS.—

''(A) AUTHORITY TO MODIFY.—The Commission and the Commodity Futures Trading Commission, by rule, regulation, or order, may jointly modify the listing standard requirements specified in subparagraph (A) or (D) of paragraph (3) to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

''(B) AUTHORITY TO GRANT EXEMPTIONS.—The Commission and the Commodity Futures Trading Commission, by order, may jointly exempt any person from compliance with the listing standard requirement specified in subparagraph (E) of paragraph (3) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

''(5) REQUIREMENTS FOR OTHER PERSONS TRADING SECURITY FUTURE PRODUCTS.—It shall be unlawful for any person (other than a national securities exchange or a national securities association registered pursuant to section 15A(a)) to constitute, maintain, or provide a marketplace or facilities for bringing together purchasers and sellers of security future products or to otherwise perform with respect to security future products the functions commonly performed by a stock exchange as that term is generally understood, unless a national securities association registered pursuant to section 15A(a) or a national securities exchange of which such person is a member—

''(A) has in place procedures for coordinated surveillance among such person, the market trading the securities underlying the security future products, and other markets trading related securities to detect manipulation and insider trading;

''(B) has rules to require audit trails necessary or appropriate to facilitate the coordinated surveillance required in subparagraph (A); and

''(C) has rules to require such person to coordinate trading halts with markets trading the securities underlying the security future products and other markets trading related securities.

''(6) DEFERRAL OF OPTIONS ON SECURITY FUTURES TRADING.—No person shall offer to enter into, enter into, or confirm the execution of any put, call, straddle, option, or privilege on a security future, except that, after 3 years after the date of enactment of this subsection, the Commission and the Commodity Futures Trading Commission may by order jointly determine to permit trading of puts, calls, straddles, options, or privileges on any security future authorized to be traded under the provisions of this Act and the Commodity Exchange Act.

''(7) DEFERRAL OF LINKED AND COORDINATED CLEARING.—

''(A) Notwithstanding paragraph (2), until the compliance date, a national securities exchange or national securities association registered pursuant to section 15A(a) may trade a security futures product that does not—

''(i) conform with any listing standard promulgated to meet the requirement specified in subparagraph (E) of paragraph (3); or

''(ii) meet the criterion specified in section 2(a)(1)(D)(i)(IV) of the Commodity Exchange Act.

''(B) The Commission and the Commodity Futures Trading Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

''(C) For purposes of this paragraph, the term 'compliance date' means the later of—

''(i) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all national securities exchanges, any national securities associations registered pursuant to section 15A(a), and all other persons equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges and any national securities associations registered pursuant to section 15A(a); or

''(ii) 2 years after the date on which trading in any security futures product commences under this title.''.

(b) MARGIN.—Section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) is amended—

(1) in subsection (a), by inserting ''or a security futures product'' after ''exempted security'';

(2) in subsection (c)(1)(A), by inserting ''except as provided in paragraph (2),'' after ''security),'';

(3) by redesignating paragraph (2) of subsection (c) as paragraph (3) of such subsection; and

(4) by inserting after paragraph (1) of such subsection the following:

''(2) MARGIN REGULATIONS.—

''(A) COMPLIANCE WITH MARGIN RULES REQUIRED.—It shall be unlawful for any broker, dealer, or member of a national securities exchange to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on, any security futures product unless such activities comply with the regulations—

''(i) which the Board shall prescribe pursuant to subparagraph (B); or

''(ii) if the Board determines to delegate the authority to prescribe such regulations, which the Commission and the Commodity Futures Trading Commission shall jointly prescribe pursuant to subparagraph (B).

If the Board delegates the authority to prescribe such regulations under clause (ii) and the Commission and the Commodity Futures Trading Commission have not jointly prescribed such regulations within a reasonable period of time after the date of such delegation, the Board shall prescribe such regulations pursuant to subparagraph (B).

''(B) CRITERIA FOR ISSUANCE OF RULES.—The Board shall prescribe, or, if the authority is delegated pursuant to subparagraph (A)(ii), the Commission and the Commodity Futures Trading Commission shall jointly prescribe, such regulations to establish margin requirements, including the establishment of levels of margin

(initial and maintenance) for security futures products under such terms, and at such levels, as the Board deems appropriate, or as the Commission and the Commodity Futures Trading Commission jointly deem appropriate—

''(i) to preserve the financial integrity of markets trading security futures products;

''(ii) to prevent systemic risk;

''(iii) to require that—

''(I) the margin requirements for a security future product be consistent with the margin requirements for comparable option contracts traded on any exchange registered pursuant to section 6(a) of this title; and

''(II) initial and maintenance margin levels for a security future product not be lower than the lowest level of margin, exclusive of premium, required for any comparable option contract traded on any exchange registered pursuant to section 6(a) of this title, other than an option on a security future;

except that nothing in this subparagraph shall be construed to prevent a national securities exchange or national securities association from requiring higher margin levels for a security future product when it deems such action to be necessary or appropriate; and

''(iv) to ensure that the margin requirements (other than levels of margin), including the type, form, and use of collateral for security futures products, are and remain consistent with the requirements established by the Board, pursuant to subparagraphs (A) and (B) of paragraph (1).''.

(c) INCORPORATION OF SECURITY FUTURES PRODUCTS INTO THE NATIONAL MARKET SYSTEM.—Section 11A of the Securities Exchange Act of 1934 (15 U.S.C. 78k–1) is amended by adding at the end the following:

''(e) NATIONAL MARKETS SYSTEM FOR SECURITY FUTURES PRODUCTS.—

''(1) CONSULTATION AND COOPERATION REQUIRED.—With respect to security futures products, the Commission and the Commodity Futures Trading Commission shall consult and cooperate so that, to the maximum extent practicable, their respective regulatory responsibilities may be fulfilled and the rules and regulations applicable to security futures products may foster a national market system for security futures products if the Commission and the Commodity Futures Trading Commission jointly determine that such a system would be consistent with the congressional findings in subsection (a)(1). In accordance with this objective, the Commission shall, at least 15 days prior to the issuance for public comment of any proposed rule or regulation under this section concerning security futures products, consult and request the views of the Commodity Futures Trading Commission.

''(2) APPLICATION OF RULES BY ORDER OF CFTC.—No rule adopted pursuant to this section shall be applied to any person with respect to the trading of security futures products on an exchange that is registered under section 6(g) unless the Commodity Futures Trading Commission has issued an order directing that such rule is applicable to such persons.''.

(d) INCORPORATION OF SECURITY FUTURES PRODUCTS INTO THE NATIONAL SYSTEM FOR CLEARANCE AND SETTLEMENT.—Section 17A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(b)) is amended by adding at the end the following:

''(7)(A) A clearing agency that is regulated directly or indirectly by the Commodity Futures Trading Commission through its association with a designated contract market for security futures products that is a national securities exchange registered pursuant to section 6(g), and that would be required to register pursuant to paragraph (1) of this subsection only because it performs the functions of a clearing agency with respect to security futures products effected pursuant to the rules of the designated contract market with which such agency is associated, is exempted from the provisions of this section and the rules and regulations thereunder, except that if such a clearing agency performs the functions of a clearing agency with respect to a security futures product that is not cash settled, it must have arrangements in place with a registered clearing agency to effect the payment and delivery of the securities underlying the security futures product.

''(B) Any clearing agency that performs the functions of a clearing agency with respect to security futures products must coordinate with and develop fair and reasonable links with any and all other clearing agencies that perform the functions of a clearing agency with respect to security futures products, in order to permit, as of the compliance date (as defined in section 6(h)(6)(C)), security futures products to be purchased on one market and offset on another market that trades such products.''.

(e) MARKET EMERGENCY POWERS AND CIRCUIT BREAKERS.—Section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(k)) is amended—

(1) in paragraph (1), by adding at the end the following: ''If the actions described in subparagraph (A) or (B) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.''; and

(2) in paragraph (2)(B), by inserting after the first sentence the following: ''If the actions described in subparagraph (A) involve a security futures product, the Commission shall consult with and consider the views of the Commodity Futures Trading Commission.''.

(f) TRANSACTION FEES.—Section 31 of the Securities Exchange Act of 1934 (15 U.S.C. 78ee) is amended—

(1) in subsection (a), by inserting ''and assessments'' after ''fees'';

(2) in subsections (b), (c), and (d)(1), by striking ''and other evidences of indebtedness'' and inserting ''other evidences of indebtedness, and security futures products'';

(3) in subsection (f), by inserting ''or assessment'' after ''fee'';

(4) in subsection (g), by inserting ''and assessment'' after ''fee'';

(5) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(6) by inserting after subsection (d) the following new subsection:

''(e) ASSESSMENTS ON SECURITY FUTURES TRANSACTIONS.—Each national securities exchange and national securities association shall pay to the Commission an assessment equal to $0.02 for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through any member of such association otherwise than on a national securities exchange, except that for fiscal year 2007 or any succeeding fiscal year such assessment shall be equal to $0.0075 for each such transaction. Assessments collected pursuant to this subsection shall be deposited and collected as general revenue of the Treasury.''.

(g) EXEMPTION FROM SHORT SALE PROVISIONS.—Section 10(a) of the Securities Exchange Act of 1934 (15 U.S.C 78j(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and

(2) by adding at the end the following:

''(2) Paragraph (1) of this subsection shall not apply to security futures products.''.

(h) RULEMAKING AUTHORITY TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 15(c)(3) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(3))is amended—

(1) by inserting ''(A)'' after ''(3)''; and

(2) by adding at the end the following:

''(B) Consistent with this title, the Commission, in consultation with the Commodity Futures Trading Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of (i) the provisions of section 8, section 15(c)(3), and section 17 of this title and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting, or other financial responsibility rules, involving security futures products and (ii) similar provisions of the Commodity Exchange Act and rules and regulations thereunder involving security futures products.''.

(i) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C 78f) is amended by inserting after subsection (h), as added by subsection (a) of this section, the following:

''(i) Consistent with this title, each national securities exchange registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

(1) rules of such national securities exchange of the type specified in section 15(c)(3)(B) involving security futures products; and

(2) similar rules of national securities exchanges registered pursuant to section 6(g) and national securities associations registered pursuant to section 15A(k) involving security futures products.''.

(j) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C 78o–3) is amended by inserting after subsection (k), as added by section 203, the following:

''(l) Consistent with this title, each national securities association registered pursuant to subsection (a) of this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any broker or dealer registered with the Commission pursuant to section 15(b) (except paragraph (11) thereof), that is also registered with the Commodity Futures Trading Commission pursuant to section 4f(a) of the Commodity Exchange Act (except paragraph (2) thereof), with respect to the application of—

''(1) rules of such national securities association of the type specified in section 15(c)(3)(B) involving security futures products; and

''(2) similar rules of national securities associations registered pursuant to subsection (k) of this section and national securities exchanges registered pursuant to section 6(g) involving security futures products.''.

(k) OBLIGATION TO PUT IN PLACE PROCEDURES AND ADOPT RULES.—

(1) NATIONAL SECURITIES ASSOCIATIONS.—Section 15A of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3) is amended by inserting after subsection (l), as added by subsection (j) of this section, the following new subsection:

''(m) PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.—A national securities association registered pursuant to subsection (a) shall, not later than 8 months after the date of enactment of the Commodity Futures Modernization Act of 2000, implement the procedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title.''.

(2) NATIONAL SECURITIES EXCHANGES.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by inserting after subsection (i), as added by subsection (i) of this section, the following new subsection:

''(j) PROCEDURES AND RULES FOR SECURITY FUTURE PRODUCTS.—A national securities exchange registered pursuant to subsection (a) shall implement the procedures specified in section 6(h)(5)(A) of this title and adopt the rules specified in subparagraphs (B) and (C) of section 6(h)(5) of this title not later than 8 months after the date of receipt of a request from an alternative trading system for such implementation and rules.''.

(l) OBLIGATION TO ADDRESS SECURITY FUTURES PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section 6 of the Securities Exchange Act of 1934 (15 U.S.C. 78f) is amended by adding after subsection (j), as added by subsection (k) of this section, the following—

''(k)(1) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Commodity Futures Trading Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

''(2) The rules, regulations, or orders adopted under paragraph (1) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflect.''.

SEC. 207. CLEARANCE AND SETTLEMENT.

Section 17A(b) of the Securities Exchange Act of 1934 (15 U.S.C. 78q–1(b)) is amended—

(1) in paragraph (3)(A), by inserting ''and derivative agreements, contracts, and transactions'' after ''prompt and accurate clearance and settlement of securities transactions'';

(2) in paragraph (3)(F), by inserting ''and, to the extent applicable, derivative agreements, contracts, and transactions'' after ''designed to promote the prompt and accurate clearance and settlement of securities transactions''; and

(3) by inserting after paragraph (7), as added by section 206(d), the following:

''(8) A registered clearing agency shall be permitted to provide facilities for the clearance and settlement of any derivative agreements, contracts, or transactions that are excluded from the Commodity Exchange Act, subject to the requirements of this section and to such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title.''.

SEC. 208. AMENDMENTS RELATING TO REGISTRATION AND DISCLOSURE ISSUES UNDER THE SECURITIES ACT OF 1933 AND THE SECURITIES EXCHANGE ACT OF 1934.

(a) AMENDMENTS TO THE SECURITIES ACT OF 1933.—

(1) TREATMENT OF SECURITY FUTURES PRODUCTS.—Section 2(a) of the Securities Act of 1933 (15 U.S.C. 77b(a)) is amended—

(A) in paragraph (1), by inserting ''security future,'' after ''treasury stock,'';

(B) in paragraph (3), by adding at the end the following: ''Any offer or sale of a security futures product by or on behalf of the issuer of the securities underlying the security futures product, an affiliate of the issuer, or an underwriter, shall constitute a contract for sale of, sale of, offer for sale, or offer to sell the underlying securities.'';

(C) by adding at the end the following:

''(16) The terms 'security future', 'narrow-based security index', and 'security futures product' have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.''.

(2) EXEMPTION FROM REGISTRATION.—Section 3(a) of the Securities Act of 1933 (15 U.S.C. 77c(a)) is amended by adding at the end the following:

''(14) Any security futures product that is—

''(A) cleared by a clearing agency registered under section 17A of the Securities Exchange Act of 1934 or exempt from registration under subsection (b)(7) of such section 17A; and

''(B) traded on a national securities exchange or a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.''.

(3) CONFORMING AMENDMENT.—Section 12(a)(2) of the Securities Act of 1933 (15 U.S.C. 77l(a)(2)) is amended by striking ''paragraph (2)'' and inserting ''paragraphs (2) and (14)''.

(b) AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.—

(1) EXEMPTION FROM REGISTRATION.—Section 12(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(a)) is amended by adding at the end the following: ''The provisions of this subsection shall not apply in respect of a security futures product traded on a national securities exchange.''.

(2) EXEMPTIONS FROM REPORTING REQUIREMENT.—Section 12(g)(5) of the Securities Exchange Act of 1934 (15 U.S.C. 78l(g)(5)) is amended by adding at the end the following: ''For purposes of this subsection, a security futures product shall not be considered a class of equity security of the issuer of the securities underlying the security futures product.''.

(3) TRANSACTIONS BY CORPORATE INSIDERS.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by adding at the end the following:

''(f) TREATMENT OF TRANSACTIONS IN SECURITY FUTURES PRODUCTS.—The provisions of this section shall apply to ownership of and transactions in security futures products.''.

SEC. 209. AMENDMENTS TO THE INVESTMENT COMPANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT OF 1940.

(a) DEFINITIONS UNDER THE INVESTMENT COMPANY ACT OF 1940 AND THE INVESTMENT ADVISERS ACT OF 1940.—

(1) Section 2(a)(36) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(36)) is amended by inserting ''security future,'' after ''treasury stock,''.

(2) Section 202(a)(18) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)(18)) is amended by inserting ''security future,'' after ''treasury stock,''.

(3) Section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)) is amended by adding at the end the following:

''(52) The terms 'security future' and 'narrow-based security index' have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.''.

(4) Section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a)) is amended by adding at the end the following:

''(27) The terms 'security future' and 'narrow-based security index' have the same meanings as provided in section 3(a)(55) of the Securities Exchange Act of 1934.''.

(b) OTHER PROVISION.—Section 203(b) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(b)) is amended—

(1) by striking ''or'' at the end of paragraph (4);

(2) by striking the period at the end of paragraph (5) and inserting ''; or''; and

(3) by adding at the end the following:

''(6) any investment adviser that is registered with the Commodity Futures Trading Commission as a commodity trading advisor whose business does not consist primarily of acting as an investment adviser, as defined in section 202(a)(11) of this title, and that does not act as an investment adviser to—

''(A) an investment company registered under title I of this Act; or

''(B) a company which has elected to be a business development company pursuant to section 54 of title I of this Act and has not withdrawn its election.''.

SEC. 210. PREEMPTION OF STATE LAWS.

Section 28(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78bb(a)) is amended—

(1) in the last sentence—

(A) by inserting ''subject to this title'' after ''privilege, or other security''; and

(B) by striking ''any such instrument, if such instrument is traded pursuant to rules and regulations of a self-regulatory organization that are filed with the Commission pursuant to section 19(b) of this Act'' and inserting ''any such security''; and

(2) by adding at the end the following new sentence: ''No provision of State law regarding the offer, sale, or distribution of securities shall apply to any transaction in a security futures product, except that this sentence shall not be construed as limiting any State antifraud law of general applicability.''.

Subtitle B—Amendments to the Commodity Exchange Act

SEC. 251. JURISDICTION OF SECURITIES AND EXCHANGE COMMISSION; OTHER PROVISIONS.

(a) JURISDICTION OF SECURITIES AND EXCHANGE COMMISSION.—

(1) Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2a) (as redesignated by section 34(a)(2)(C)) is amended—

(A) in clause (ii)—

(i) by inserting ''or register a derivatives transaction execution facility that trades or executes,'' after ''contract market in,'';

(ii) by inserting after ''contracts) for future delivery'' the following: '', and no derivatives transaction execution facility shall trade or execute such contracts of sale (or options on such contracts) for future delivery,'';

(iii) by striking ''making such application demonstrates and the Commission expressly finds that the specific contract (or option on such contract) with respect to which the application has been made meets'' and inserting ''or the derivatives transaction execution facility, and the applicable contract, meet'';

(iv) by striking subclause (III) of clause (ii) and inserting the following:

''(III) Such group or index of securities shall not constitute a narrow-based security index.'';

(B) by striking clause (iii);

(C) by striking clause (iv) and inserting the following:

''(iii) If, in its discretion, the Commission determines that a stock index futures contract, notwithstanding its conformance with the requirements in clause (ii) of this subparagraph, can reasonably be used as a surrogate for trading a security (including a security futures product), it may, by order, require such contract and any option thereon be traded and regulated as security futures products as defined in section 3(a)(56) of the Securities Exchange Act of 1934 and section 1a of this Act subject to all rules and regulations applicable to security futures products under this Act and the securities laws as defined in section 3(a)(47) of the Securities Exchange Act of 1934.''; and

(D) by redesignating clause (v) as clause (iv).

(2) Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a, 4) is amended by adding at the end the following:

''(D)(i) Notwithstanding any other provision of this Act, the Securities and Exchange Commission shall have jurisdiction and authority over security futures as defined in section 3(a)(55) of the Securities Exchange Act of 1934, section 2(a)(16) of the Securities Act of 1933, section 2(a)(52) of the Investment Company Act of 1940, and section 202(a)(27) of the Investment Advisers Act of 1940, options on security futures, and persons effecting transactions in security futures and options thereon, and this Act shall apply to and the Commission shall have jurisdiction with respect to accounts, agreements (including any transaction which is of the character of, or is commonly known to the trade as, an 'option', 'privilege', 'indemnity', 'bid', 'offer', 'put', 'call', 'advance guaranty', or 'decline guaranty'), contracts, and transactions involving, and may designate a board of trade as

a contract market in, or register a derivatives transaction execution facility that trades or executes, a security futures product as defined in section 1a of this Act: Provided, however, That, except as provided in clause (vi) of this subparagraph, no board of trade shall be designated as a contract market with respect to, or registered as a derivatives transaction execution facility for, any such contracts of sale for future delivery unless the board of trade and the applicable contract meet the following criteria:

''(I) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, any security underlying the security future, including each component security of a narrow-based security index, is registered pursuant to section 12 of the Securities Exchange Act of 1934.

''(II) If the security futures product is not cash settled, the board of trade on which the security futures product is traded has arrangements in place with a clearing agency registered pursuant to section 17A of the Securities Exchange Act of 1934 for the payment and delivery of the securities underlying the security futures product.

''(III) Except as otherwise provided in a rule, regulation, or order issued pursuant to clause (v) of this subparagraph, the security future is based upon common stock and such other equity securities as the Commission and the Securities and Exchange Commission jointly determine appropriate.

''(IV) The security futures product is cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products, which permits the security futures product to be purchased on a designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and offset on another designated contract market, registered derivatives transaction execution facility, national securities exchange registered under section 6(a) of the Securities Exchange Act of 1934, or national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

''(V) Only futures commission merchants, introducing brokers, commodity trading advisors, commodity pool operators or associated persons subject to suitability rules comparable to those of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 solicit, accept any order for, or otherwise deal in any transaction in or in connection with the security futures product.

''(VI) The security futures product is subject to a prohibition against dual trading in section 4j of this Act and the rules and regulations thereunder or the provisions of section 11(a) of the Securities Exchange Act of 1934 and the rules and regulations thereunder, except to the extent otherwise permitted under the Securities Exchange Act of 1934 and the rules and regulations thereunder.

''(VII) Trading in the security futures product is not readily susceptible to manipulation of the price of such security futures product, nor to causing or being used in the manipulation of the price of any underlying security, option on such security, or option on a group or index including such securities;

''(VIII) The board of trade on which the security futures product is traded has procedures in place for coordinated surveillance among such board of trade, any market on which any security underlying the security futures product is traded, and other markets on which any related security is traded to detect manipulation and insider trading, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has in place such procedures.

''(IX) The board of trade on which the security futures product is traded has in place audit trails necessary or appropriate to facilitate the coordinated surveillance required in subclause (VIII), except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such audit trails.

''(X) The board of trade on which the security futures product is traded has in place procedures to coordinate trading halts between such board of trade and markets on which any security underlying the security futures product is traded and other markets on which any related security is traded, except that, if the board of trade is an alternative trading system, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 or national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 of which such alternative trading system is a member has rules to require such coordinated trading halts.

''(XI) The margin requirements for a security futures product comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934, except that nothing in this subclause shall be construed to prevent a board of trade from requiring higher margin levels for a security futures product when it deems such action to be necessary or appropriate.

''(ii) It shall be unlawful for any person to offer, to enter into, to execute, to confirm the execution of, or to conduct any office or business anywhere in the United States, its territories or possessions, for the purpose of soliciting, or accepting any order for, or otherwise dealing in, any transaction in, or in connection with, a security futures product unless—

''(I) the transaction is conducted on or subject to the rules of a board of trade that—

''(aa) has been designated by the Commission as a contract market in such security futures product; or

''(bb) is a registered derivatives transaction execution facility for the security futures product that has provided a certification with respect to the security futures product pursuant to clause (vii);

''(II) the contract is executed or consummated by, through, or with a member of the contract market or registered derivatives transaction execution facility; and

''(III) the security futures product is evidenced by a record in writing which shows the date, the parties to such security futures product and their addresses, the property covered, and its price, and each contract market member or registered derivatives transaction execution facility member shall keep the record for a period of 3 years from the date of the transaction, or for a longer period if the Commission so directs, which record shall at all times be open to the inspection of any duly authorized representative of the Commission.

''(iii)(I) Except as provided in subclause (II) but notwithstanding any other provision of this Act, no person shall offer to enter into, enter into, or confirm the execution of any option on a security future.

''(II) After 3 years after the date of the enactment of the Commodity Futures Modernization Act of 2000, the Commission and the Securities and Exchange Commission may by order jointly determine to permit trading of options on any security future authorized to be traded under the provisions of this Act and the Securities Exchange Act of 1934.

''(iv)(I) All relevant records of a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant to section 5f shall be subject to such reasonable periodic or special examinations by representatives of the Commission as the Commission deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this Act, and the Commission, before conducting any such examination, shall give notice to the Securities and Exchange Commission of the proposed examination and consult with the Securities and Exchange Commission concerning the feasibility and desirability of coordinating the examination with examinations conducted by the Securities and Exchange Commission in order to avoid unnecessary regulatory duplication or undue regulatory burdens for the registrant or board of trade.

''(II) The Commission shall notify the Securities and Exchange Commission of any examination conducted of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant to section 5f, and, upon request, furnish to the Securities and Exchange Commission any examination report and data supplied to or prepared by the Commission in connection with the examination.

''(III) Before conducting an examination under subclause (I), the Commission shall use the reports of examinations, unless the information sought is unavailable in the reports, of any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant to section 5f that is made by the Securities and Exchange Commission, a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78o–3(a)), or a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78f(a)).

''(IV) Any records required under this subsection for a futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), associated person exempt from registration pursuant to section 4k(6), or board of trade designated as a contract market in a security futures product pursuant to section 5f, shall be limited to records with respect to accounts, agreements, contracts, and transactions involving security futures products.

''(v)(I) The Commission and the Securities and Exchange Commission, by rule, regulation, or order, may jointly modify the criteria specified in subclause (I) or (III) of clause (i), including the trading of security futures based on securities other than equity securities, to the extent such modification fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public interest, and is consistent with the protection of investors.

''(II) The Commission and the Securities and Exchange Commission, by order, may jointly exempt any person from compliance with the criterion specified in clause (i)(IV) to the extent such exemption fosters the development of fair and orderly markets in security futures products, is necessary or appropriate in the public

interest, and is consistent with the protection of investors.

''(vi)(I) Notwithstanding clauses (i) and (vii), until the compliance date, a board of trade shall not be required to meet the criterion specified in clause (i)(IV).

''(II) The Commission and the Securities and Exchange Commission shall jointly publish in the Federal Register a notice of the compliance date no later than 165 days before the compliance date.

''(III) For purposes of this clause, the term 'compliance date' means the later of—

''(aa) 180 days after the end of the first full calendar month period in which the average aggregate comparable share volume for all security futures products based on single equity securities traded on all designated contract markets and registered derivatives transaction execution facilities equals or exceeds 10 percent of the average aggregate comparable share volume of options on single equity securities traded on all national securities exchanges registered pursuant to section 6(a) of the Securities Exchange Act of 1934 and any national securities associations registered pursuant to section 15A(a) of such Act; or

''(bb) 2 years after the date on which trading in any security futures product commences under this Act.

''(vii) It shall be unlawful for a board of trade to trade or execute a security futures product unless the board of trade has provided the Commission with a certification that the specific security futures product and the board of trade, as applicable, meet the criteria specified in subclauses (I) through (XI) of clause (i), except as otherwise provided in clause (vi).''.

(b) MARGIN ON SECURITY FUTURES.—Section 2(a)(1)(C)(vi) of the Commodity Exchange Act (7 U.S.C. 2a(vi)) (as redesignated by section 34) is amended—

(1) by redesignating subclause (V) as subclause (VI); and

(2) by striking ''(vi)(I)'' and all that follows through subclause (IV) and inserting the following:

''(v)(I) Notwithstanding any other provision of this Act, any contract market in a stock index futures contract (or option thereon) other than a security futures product, or any derivatives transaction execution facility on which such contract or option is traded, shall file with the Board of Governors of the Federal Reserve System any rule establishing or changing the levels of margin (initial and maintenance) for such stock index futures contract (or option thereon) other than security futures products.

''(II) The Board may at any time request any contract market or derivatives transaction execution facility to set the margin for any stock index futures contract (or option thereon), other than for any security futures product, at such levels as the Board in its judgment determines are appropriate to preserve the financial integrity of the contract market or derivatives transaction execution facility, or its clearing system, or to prevent systemic risk. If the contract market or derivatives transaction execution facility fails to do so within the time specified by the Board in its request, the Board may direct the contract market or derivatives transaction execution facility to alter or supplement the rules of the contract market or derivatives transaction execution facility as specified in the request.

''(III) Subject to such conditions as the Board may determine, the Board may delegate any or all of its authority, relating to margin for any stock index futures contract (or option thereon), other than security futures products, under this clause to the Commission.

''(IV) It shall be unlawful for any futures commission merchant to, directly or indirectly, extend or maintain credit to or for, or collect margin from any customer on any security futures product unless such activities comply with the regulations prescribed pursuant to section 7(c)(2)(B) of the Securities Exchange Act of 1934.

''(V) Nothing in this clause shall supersede or limit the authority granted to the Commission in section 8a(9) to direct a contract market or registered derivatives transaction execution facility, on finding an emergency to exist, to raise temporary margin levels on any futures contract, or option on the contract covered by this clause, or on any security futures product.''.

(c) DUAL TRADING.—Section 4j of the Commodity Exchange Act (7 U.S.C. 6j) is amended to read as follows:

''SEC. 4j. RESTRICTIONS ON DUAL TRADING IN SECURITY FUTURES PRODUCTS ON DESIGNATED CONTRACT MARKETS AND REGISTERED DERIVATIVES TRANSACTION EXECUTION FACILITIES.

''(a) The Commission shall issue regulations to prohibit the privilege of dual trading in security futures products on each contract market and registered derivatives transaction execution facility. The regulations issued by the Commission under this section—

''(1) shall provide that the prohibition of dual trading thereunder shall take effect upon issuance of the regulations; and

''(2) shall provide exceptions, as the Commission determines appropriate, to ensure fairness and orderly trading in security futures product markets, including—

''(A) exceptions for spread transactions and the correction of trading errors;

''(B) allowance for a customer to designate in writing not less than once annually a named floor broker to execute orders for such customer, notwithstanding the regulations to prohibit the privilege of dual trading required under this section; and

''(C) other measures reasonably designed to accommodate unique or special characteristics of individual boards of trade or contract markets, to address emergency or unusual market conditions, or otherwise to further the public interest consistent with the promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and with the purposes of this section.

''(b) As used in this section, the term 'dual trading' means the execution of customer orders by a floor broker during the same trading session in which the floor broker executes any trade in the same contract market or registered derivatives transaction execution facility for—

''(1) the account of such floor broker;

''(2) an account for which such floor broker has trading discretion; or

''(3) an account controlled by a person with whom such floor broker has a relationship through membership in a broker association.

''(c) As used in this section, the term 'broker association' shall include two or more contract market members or registered derivatives transaction execution facility members with floor trading privileges of whom at least one is acting as a floor broker, who—

''(1) engage in floor brokerage activity on behalf of the same employer,

''(2) have an employer and employee relationship which relates to floor brokerage activity,

''(3) share profits and losses associated with their brokerage or trading activity, or

''(4) regularly share a deck of orders.''.

(d) EXEMPTION FROM REGISTRATION FOR INVESTMENT ADVISERS.—Section 4m of the Commodity Exchange Act (7 U.S.C. 6m) is amended by adding at the end the following:

''(3) Subsection (1) of this section shall not apply to any commodity trading advisor that is registered with the Securities and Exchange Commission as an investment adviser whose business does not consist primarily of acting as a commodity trading advisor, as defined in section 1a(6), and that does not act as a commodity trading advisor to any investment trust, syndicate, or similar form of enterprise that is engaged primarily in trading in any commodity for future delivery on or subject to the rules of any contract market or registered derivatives transaction execution facility.''.

(e) EXEMPTION FROM INVESTIGATIONS OF MARKETS IN UNDERLYING SECURITIES.—Section 16 of the Commodity Exchange Act (7 U.S.C. 20) is amended by adding at the end the following:

''(e) This section shall not apply to investigations involving any security underlying a security futures product.''.

(f) RULEMAKING AUTHORITY TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 4d of the Commodity Exchange Act (7 U.S.C. 6d) is amended—

(1) by inserting ''(a)'' before the first undesignated paragraph;

(2) by inserting ''(b)'' before the second undesignated paragraph; and

(3) by adding at the end the following:

''(c) Consistent with this Act, the Commission, in consultation with the Securities and Exchange Commission, shall issue such rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act (except paragraph (11) thereof), involving the application of—

''(1) section 8, section 15(c)(3), and section 17 of the Securities Exchange Act of 1934 and the rules and regulations thereunder related to the treatment of customer funds, securities, or property, maintenance of books and records, financial reporting or other financial responsibility rules (as defined in section 3(a)(40) of the Securities Exchange Act of 1934), involving security futures products; and

''(2) similar provisions of this Act and the rules and regulations thereunder involving security futures products.''.

(g) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 17 of the Commodity Exchange Act (7 U.S.C. 21) is amended by adding at the end the following:

''(r) Consistent with this Act, each futures association registered under this section shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) of this Act (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities and Exchange Act of 1934 (except paragraph (11) thereof), with respect to the application of—

''(1) rules of such futures association of the type specified in section 4d(3) of this Act involving security futures products; and

''(2) similar rules of national securities associations registered pursuant to section 15A(a) of the Securities and Exchange Act of 1934 involving security futures products.''.

(h) OBLIGATION TO ADDRESS DUPLICATIVE REGULATION OF DUAL REGISTRANTS.—Section 5c of the Commodity Exchange Act (as added by section 114) is amended by adding at the end the following:

''(f) Consistent with this Act, each designated contract market and registered derivatives transaction execution facility shall issue such rules as are necessary to avoid duplicative or conflicting rules applicable to any futures commission merchant registered with the Commission pursuant to section 4f(a) of this Act (except paragraph (2) thereof), that is also registered with the Securities and Exchange Commission pursuant to section 15(b) of the Securities Exchange Act of 1934 (except paragraph (11) thereof) with respect to the application of—

''(1) rules of such designated contract market or registered derivatives transaction execution facility of the type specified in section 4d(3) of this Act involving security futures products; and

''(2) similar rules of national securities associations registered pursuant to section 15A(a) of the Securities Exchange Act of 1934 and national securities exchanges registered pursuant to section 6(g) of such Act involving security futures products.''.

(i) OBLIGATION TO ADDRESS SECURITY FUTURES PRODUCTS TRADED ON FOREIGN EXCHANGES.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a, and 4)) is amended by adding at the end the following:

''(E)(i) To the extent necessary or appropriate in the public interest, to promote fair competition, and consistent with promotion of market efficiency, innovation, and expansion of investment opportunities, the protection of investors, and the maintenance of fair and orderly markets, the Commission and the Securities and Exchange Commission shall jointly issue such rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of a security futures product traded on or subject to the rules of a foreign board of trade to United States persons.

''(ii) The rules, regulations, or orders adopted under clause (i) shall take into account, as appropriate, the nature and size of the markets that the securities underlying the security futures product reflects.''.

(j) SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2, 2a, and 4) is amended by adding at the end the following:

''(F)(i) Nothing in this Act is intended to prohibit a futures commission merchant from carrying security futures products traded on or subject to the rules of a foreign board of trade in the accounts of persons located outside of the United States.

''(ii) Nothing in this Act is intended to prohibit any eligible contract participant located in the United States from purchasing or carrying securities futures products traded on or subject to the rules of a foreign board of trade, exchange, or market to the same extent such person may be authorized to purchase or carry other securities traded on a foreign board of trade, exchange, or market so long as any underlying security for such security futures products is traded principally on, by, or through any exchange or market located outside the United States.''.

SEC. 252. APPLICATION OF THE COMMODITY EXCHANGE ACT TO NATIONAL SECURITIES EXCHANGES AND NATIONAL SECURITIES ASSOCIATIONS THAT TRADE SECURITY FUTURES.

(a) NOTICE DESIGNATION OF NATIONAL SECURITIES EXCHANGES AND NATIONAL SECURITIES ASSOCIATIONS.—The Commodity Exchange Act is amended by inserting after section 5e (7 U.S.C. 7b), as redesignated by section 21(1), the following:

''SEC. 5f. DESIGNATION OF SECURITIES EXCHANGES AND ASSOCIATIONS AS CONTRACT MARKETS.

''(a) Any board of trade that is registered with the Securities and Exchange Commission as a national securities exchange, is a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934, or is an alternative trading system shall be a designated contract market in security futures products if—

''(1) such national securities exchange, national securities association, or alternative trading system lists or trades no other contracts of sale for future delivery, except for security futures products;

''(2) such national securities exchange, national securities association, or alternative trading system files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of customers; and

''(3) the registration of such national securities exchange, national securities association, or alternative trading system is not suspended pursuant to an order by the Securities and Exchange Commission.

Such designation shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

''(b)(1) A national securities exchange, national securities association, or alternative trading system that is designated as a contract market pursuant to section 5f shall be exempt from the following provisions of this Act and the rules thereunder:

''(A) Subsections (c), (e), and (g) of section 4c.
''(B) Section 4j.
''(C) Section 5.
''(D) Section 5c.
''(E) Section 6a.
''(F) Section 8(d).
''(G) Section 9(f).
''(H) Section 16.

''(2) An alternative trading system that is a designated contract market under this section shall be required to be a member of a futures association registered under section 17 and shall be exempt from any provision of this Act that would require such alternative trading system to—

''(A) set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such alternative trading system; or

''(B) discipline subscribers other than by exclusion from trading.

''(3) To the extent that an alternative trading system is exempt from any provision of this Act pursuant to paragraph (2) of this subsection, the futures association registered under section 17 of which the alternative trading system is a member shall set rules governing the conduct of subscribers to the alternative trading system and discipline the subscribers.

''(4)(A) Except as provided in subparagraph (B), but notwithstanding any other provision of this Act, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any designated contract market in security futures subject to the designation requirement of this section from any provision of this Act or of any rule or regulation thereunder, to the extent such exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

''(B) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section is granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

''(C) An alternative trading system shall not be deemed to be an exchange for any purpose as a result of the designation of such alternative trading system as a contract market under this section.''.

(b) NOTICE REGISTRATION OF CERTAIN SECURITIES BROKER–DEALERS; EXEMPTION FROM REGISTRATION FOR CERTAIN SECURITIES BROKER–DEALERS.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended—

(1) by inserting ''(1)'' after ''(a)''; and
(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), and except as provided in paragraph (3), any broker or dealer that is registered with the Securities and Exchange Commission shall be registered as a futures commission merchant or introducing broker, as applicable, if—

''(A) the broker or dealer limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products;

''(B) the broker or dealer files written notice with the Commission in such form as the Commission, by rule, may prescribe containing such information as the Commission, by rule, may prescribe as necessary or appropriate in the public interest or for the protection of investors;

''(C) the registration of the broker or dealer is not suspended pursuant to an order of the Securities and Exchange Commission; and

''(D) the broker or dealer is a member of a national securities association registered pursuant to section 15A(a) of the Securities Exchange Act of 1934.

The registration shall be effective contemporaneously with the submission of notice, in written or electronic form, to the Commission.

''(3) A floor broker or floor trader shall be exempt from the registration requirements of section 4e and paragraph (1) of this subsection if—

''(A) the floor broker or floor trader is a broker or dealer registered with the Securities and Exchange Commission;

''(B) the floor broker or floor trader limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery, on or subject to the rules of any contract market to security futures products; and

''(C) the registration of the floor broker or floor trader is not suspended pursuant to an order of the Securities and Exchange Commission.''.

(c) EXEMPTION FOR SECURITIES BROKER-DEALERS FROM CERTAIN PROVISIONS OF THE COMMODITY EXCHANGE ACT.—Section 4f(a) of the Commodity Exchange Act (7 U.S.C. 6f(a)) is amended by inserting after paragraph (3), as added by subsection (b) of this section, the following:

''(4)(A) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2), or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall be exempt from the following provisions of this Act and the rules thereunder:

''(i) Subsections (b), (d), (e), and (g) of section 4c.
''(ii) Sections 4d, 4e, and 4h.
''(iii) Subsections (b) and (c) of this section.
''(iv) Section 4j.
''(v) Section 4k(1).
''(vi) Section 4p.
''(vii) Section 6d.
''(viii) Subsections (d) and (g) of section 8.
''(ix) Section 16.

''(B)(i) Except as provided in clause (ii) of this subparagraph, but notwithstanding any other provision of this Act, the Commission, by rule, regulation, or order, may conditionally or unconditionally exempt any broker or dealer subject to the registration requirement of paragraph (2), or any broker or dealer exempt from registration pursuant to paragraph (3), from any provision of this Act or of any rule or regulation thereunder, to the extent the exemption is necessary or appropriate in the public interest and is consistent with the protection of investors.

''(ii) The Commission shall, by rule or regulation, determine the procedures under which an exemptive order under this section shall be granted and may, in its sole discretion, decline to entertain any application for an order of exemption under this section.

''(C)(i) A broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3), shall not be required to become a member of any futures association registered under section 17.

''(ii) No futures association registered under section 17 shall limit its members from carrying an account, accepting an order, or transacting business with a broker or dealer that is registered as a futures commission merchant or introducing broker pursuant to paragraph (2) or an associated person thereof, or that is a floor broker or floor trader exempt from registration pursuant to paragraph (3).''.

(d) EXEMPTIONS FOR ASSOCIATED PERSONS OF SECURITIES BROKER-DEALERS.—Section 4k of the Commodity Exchange Act (7 U.S.C. 6k), is amended by inserting after paragraph (4), as added by subsection (c) of this section, the following:

''(5) Any associated person of a broker or dealer that is registered with the Securities and Exchange Commission, and who limits its solicitation of orders, acceptance of orders, or execution of orders, or placing of orders on behalf of others involving any contracts of sale of any commodity for future delivery or any option on such a contract, on or subject to the rules of any contract market or registered derivatives transaction execution facility to security futures products, shall be exempt from the following provisions of this Act and the rules thereunder:

''(A) Subsections (b), (d), (e), and (g) of section 4c.

''(B) Sections 4d, 4e, and 4h.

''(C) Subsections (b) and (c) of section 4f.

''(D) Section 4j.

''(E) Paragraph (1) of this section.

''(F) Section 4p.

''(G) Section 6d.

''(H) Subsections (d) and (g) of section 8.

''(I) Section 16.''.

SEC. 253. NOTIFICATION OF INVESTIGATIONS AND ENFORCEMENT ACTIONS.

(a) Section 8(a) of the Commodity Exchange Act (7 U.S.C. 12(a)) is amended by adding at the end the following:

''(3) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.''.

(b) Section 6 of the Commodity Exchange Act (7 U.S.C. 8, 9, 9a, 9b, 13b, 15) is amended by adding at the end the following:

''(g) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission pursuant to subsections (c) and (d) of this section against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.''.

(c) Section 6c of the Commodity Exchange Act (7 U.S.C. 13a–1) is amended by adding at the end the following:

''(h) The Commission shall provide the Securities and Exchange Commission with notice of the commencement of any proceeding and a copy of any order entered by the Commission against any futures commission merchant or introducing broker registered pursuant to section 4f(a)(2), any floor broker or floor trader exempt from registration pursuant to section 4f(a)(3), any associated person exempt from registration pursuant to section 4k(6), or any board of trade designated as a contract market pursuant to section 5f.''.

TITLE III—LEGAL CERTAINTY FOR SWAP AGREEMENTS

SEC. 301. SWAP AGREEMENT.

(a) AMENDMENT.—Title II of the Gramm-Leach-Bliley Act (Public Law 106–102) is amended by inserting after section 206 the following new sections:

''SEC. 206A. SWAP AGREEMENT.

''(a) IN GENERAL.—Except as provided in subsection (b), as used in this section, the term 'swap agreement' means any agreement, contract, or transaction between eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act as in effect on the date of enactment of this section), other than a person that is an eligible contract participant under section 1a(12)(C) of the Commodity Exchange Act, the material terms of which (other than price and quantity) are subject to individual negotiation, and that—

''(1) is a put, call, cap, floor, collar, or similar option of any kind for the purchase or sale of, or based on the value of, one or more interest or other rates, currencies, commodities, indices, quantitative measures, or other financial or economic interests or property of any kind;

''(2) provides for any purchase, sale, payment or delivery (other than a dividend on an equity security) that is dependent on the occurrence, non-occurrence, or the extent of the occurrence of an event or contingency associated with a potential financial, economic, or commercial consequence;

''(3) provides on an executory basis for the exchange, on a fixed or contingent basis, of one or more payments based on the value or level of one or more interest or other rates, currencies, commodities, securities, instruments of indebtedness, indices, quantitative measures, or other financial or economic interests or property of any kind, or any interest therein or based on the value thereof, and that transfers, as between the parties to the transaction, in whole or in part, the financial risk associated with a future change in any such value or level without also conveying a current or future direct or indirect ownership interest in an asset (including any enterprise or investment pool) or liability that incorporates the financial risk so transferred, including any such agreement, contract, or transaction commonly known as an interest rate swap, including a rate floor, rate cap, rate collar, cross-currency rate swap, basis swap, currency swap, equity index swap, equity swap, debt index swap, debt swap, credit spread, credit default swap, credit swap, weather swap, or commodity swap;

''(4) provides for the purchase or sale, on a fixed or contingent basis, of any commodity, currency, instrument, interest, right, service, good, article, or property of any kind; or

''(5) is any combination or permutation of, or option on, any agreement, contract, or transaction described in any of paragraphs (1) through (4).

''(b) EXCLUSIONS.—The term 'swap agreement' does not include—

''(1) any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities, including any interest therein or based on the value thereof;

''(2) any put, call, straddle, option, or privilege entered into on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934 relating to foreign currency;

''(3) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a fixed basis;

''(4) any agreement, contract, or transaction providing for the purchase or sale of one or more securities on a contingent basis, unless such agreement, contract, or transaction predicates such purchase or sale on the occurrence of a bona fide contingency that might reasonably be expected to affect or be affected by the creditworthiness of a party other than a party to the agreement, contract, or transaction;

''(5) any note, bond, or evidence of indebtedness that is a security as defined in section 2(a)(1) of the Securities Exchange Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934; or

''(6) any agreement, contract, or transaction that is—

''(A) based on a security; and

''(B) entered into directly or through an underwriter (as defined in section 2(a) of the Securities Act of 1933) by the issuer of such security for the purposes of raising capital, unless such agreement, contract, or transaction is entered into to manage a risk associated with capital raising.

''(c) RULE OF CONSTRUCTION REGARDING MASTER AGREEMENTS.—As used in this section, the term 'swap agreement' shall be construed to include a master agreement that provides for an agreement, contract, or transaction that is a swap agreement pursuant to subsections (a) and (b), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement, contract, or transaction that is not a swap agreement pursuant to subsections (a) and (b), except that the master agreement shall be considered to be a swap agreement only with respect to each agreement, contract, or transaction under the master agreement that is a swap agreement pursuant to subsections (a) and (b).

''SEC. 206B. SECURITY-BASED SWAP AGREEMENT.

''As used in this section, the term 'security-based swap agreement' means a swap agreement (as defined in section 206A) of which a material term is based on the price, yield, value, or volatility of any security or any group or index of securities, or any interest therein.

''SEC. 206C. NON-SECURITY-BASED SWAP AGREEMENT.

''As used in this section, the term 'non-security-based swap agreement' means any swap agreement (as defined in section 206A) that is not a security-based swap agreement (as defined in section 206B).''.

(b) SECURITY DEFINITION.—As used in the amendment made by subsection (a), the term ''security'' has the same meaning as in section 2(a)(1) of the Securities Act of 1933 or section 3(a)(10) of the Securities Exchange Act of 1934.

SEC. 302. AMENDMENTS TO THE SECURITIES ACT OF 1933.

(a) ENFORCEMENT FOCUS.—The Securities Act of 1933 is amended by inserting after section 2 (15 U.S.C.77b) the following new section:

''SEC. 2A. SWAP AGREEMENTS.

''(a) NON-SECURITY-BASED SWAP AGREEMENTS.—The definition of 'security' in section 2(a)(1) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).

''(b) SECURITY-BASED SWAP AGREEMENTS.—

''(1) The definition of 'security' in section 2(a)(1) of this title does not include any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

''(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this title of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). If the Commission becomes aware that a registrant has filed a registration statement with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration statement with respect to such a swap agreement shall be void and of no force or effect.

''(3) The Commission is prohibited from—

''(A) promulgating, interpreting, or enforcing rules; or

''(B) issuing orders of general applicability;

under this title in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

''(4) References in this title to the 'purchase' or 'sale' of a security-based swap agreement shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), as the context may require.''.

(b) ANTI-FRAUD AND ANTI-MANIPULATION ENFORCEMENT AUTHORITY.—Section 17(a) of the Securities Act of 1933 (15 U.S.C. 77q(a)) is amended to read as follows:

''(a) It shall be unlawful for any person in the offer or sale of any securities or any security-

based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) by the use of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly—

''(1) to employ any device, scheme, or artifice to defraud, or

''(2) to obtain money or property by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

''(3) to engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon the purchaser.''.

(c) LIMITATION.—Section 17 of the Securities Act of 1933 is amended by adding at the end the following new subsection:

''(d) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 2A(b) of this title.''.

SEC. 303. AMENDMENTS TO THE SECURITIES EXCHANGE ACT OF 1934.

(a) ENFORCEMENT FOCUS.—The Securities Exchange Act of 1934 is amended by inserting after section 3 (15 U.S.C. 78c) the following new section:

''SEC. 3A. SWAP AGREEMENTS.

''(a) NON-SECURITY-BASED SWAP AGREEMENTS.—The definition of 'security' in section 3(a)(10) of this title does not include any non-security-based swap agreement (as defined in section 206C of the Gramm-Leach-Bliley Act).

''(b) SECURITY-BASED SWAP AGREEMENTS.—

''(1) The definition of 'security' in section 3(a)(10) of this title does not include any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

''(2) The Commission is prohibited from registering, or requiring, recommending, or suggesting, the registration under this title of any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act). If the Commission becomes aware that a registrant has filed a registration application with respect to such a swap agreement, the Commission shall promptly so notify the registrant. Any such registration with respect to such a swap agreement shall be void and of no force or effect.

''(3) Except as provided in section 16(a) with respect to reporting requirements, the Commission is prohibited from—

''(A) promulgating, interpreting, or enforcing rules; or

''(B) issuing orders of general applicability;

under this title in a manner that imposes or specifies reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading with respect to any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act).

''(4) References in this title to the 'purchase' or 'sale' of a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be deemed to mean the execution, termination (prior to its scheduled maturity date), assignment, exchange, or similar transfer or conveyance of, or extinguishing of rights or obligations under, a security-based swap agreement, as the context may require.''.

(b) ANTI-FRAUD, ANTI-MANIPULATION ENFORCEMENT AUTHORITY.—Paragraphs (2) through (5) of section 9(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78i(a)(2)–(5)) are amended to read as follows:

''(2) To effect, alone or with one or more other persons, a series of transactions in any security registered on a national securities exchange or in connection with any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security creating actual or apparent active trading in such security, or raising or depressing the price of such security, for the purpose of inducing the purchase or sale of such security by others.

''(3) If a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase or sale of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation or dissemination in the ordinary course of business of information to the effect that the price of any such security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.

''(4) If a dealer or broker, or the person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to make, regarding any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, for the purpose of inducing the purchase or sale of such security or such security-based swap agreement, any statement which was at the time and in the light of the circumstances under which it was made, false or misleading with respect to any material fact, and which he knew or had reasonable ground to believe was so false or misleading.

''(5) For a consideration, received directly or indirectly from a dealer or broker, or other person selling or offering for sale or purchasing or offering to purchase the security or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security, to induce the purchase of any security registered on a national securities exchange or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security by the circulation or dissemination of information to the effect that the price of any such security will or is likely to rise or fall because of the market operations of any one or more persons conducted for the purpose of raising or depressing the price of such security.''.

(c) LIMITATION.—Section 9 of the Securities Exchange Act of 1934 is amended by adding at the end the following new subsection:

''(i) The authority of the Commission under this section with respect to security-based swap agreements shall be subject to the restrictions and limitations of section 3A(b) of this title.''.

(d) REGULATIONS ON THE USE OF MANIPULATIVE AND DECEPTIVE DEVICES.—Section 10 of the Securities Exchange Act of 1934 (15 U.S.C. 78j) is amended—

(1) in subsection (b), by inserting ''or any securities-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act),'' before ''any manipulative or deceptive device''; and

(2) by adding at the end the following:

''Rules promulgated under subsection (b) that prohibit fraud, manipulation, or insider trading (but not rules imposing or specifying reporting or recordkeeping requirements, procedures, or standards as prophylactic measures against fraud, manipulation, or insider trading), and judicial precedents decided under subsection (b) and rules promulgated thereunder that prohibit fraud, manipulation, or insider trading, shall apply to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) to the same extent as they apply to securities. Judicial precedents decided under section 17(a) of the Securities Act of 1933 and sections 9, 15, 16, 20, and 21A of this title, and judicial precedents decided under applicable rules promulgated under such sections, shall apply to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) to the same extent as they apply to securities.''.

(e) BROKER, DEALER ANTI-FRAUD, ANTI-MANIPULATION ENFORCEMENT AUTHORITY.—Section 15(c)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(c)(1)) is amended to read as follows:

''(c)(1)(A) No broker or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act), by means of any manipulative, deceptive, or other fraudulent device or contrivance.

''(B) No municipal securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving a municipal security by means of any manipulative, deceptive, or other fraudulent device or contrivance.

''(C) No government securities broker or government securities dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce or to attempt to induce the purchase or sale of, any government security or any security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving a government security by means of any manipulative, deceptive, or other fraudulent device or contrivance.''.

(f) LIMITATION.—Section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) is amended by adding at the end the following new subsection:

''(i) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.''.

(g) ANTI-INSIDER TRADING ENFORCEMENT AUTHORITY.—Subsections (a) and (b) of section 16 (15 U.S.C. 78p(a), (b)) of the Securities Exchange of 1934 are amended to read as follows:

''(a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this title, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities exchange or by the effective date of a registration statement filed pursuant to section 12 (g) of this title, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and, if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership or if such person shall have purchased or sold a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving such equity security during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership and such purchases and sales of such security-based swap agreements as have occurred during such calendar month.

''(b) For the purpose of preventing the unfair use of information which may have been obtained by such beneficial owner, director, or officer by reason of his relationship to the issuer, any profit realized by him from any purchase and sale, or any sale and purchase, of any equity security of such issuer (other than an exempted security) or a security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involving any such equity security within any period of less than six months, unless such security or security-based swap agreement was acquired in good faith in connection with a debt previously contracted, shall inure to and be recoverable by the issuer, irrespective of any intention on the part of such beneficial owner, director, or officer in entering into such transaction of holding the security or security-based swap agreement purchased or of not repurchasing the security or security-based swap agreement sold for a period exceeding six months. Suit to recover such profit may be instituted at law or in equity in any court of competent jurisdiction by the issuer, or by the owner of any security of the issuer in the name and in behalf of the issuer if the issuer shall fail or refuse to bring such suit within sixty days after request or shall fail diligently to prosecute the same thereafter; but no such suit shall be brought more than two years after the date such profit was realized. This subsection shall not be construed to cover any transaction where such beneficial owner was not such both at the time of the purchase and sale, or the sale and purchase, of the security or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) involved, or any transaction or transactions which the Commission by rules and regulations may exempt as not comprehended within the purpose of this subsection.''.

(h) LIMITATION.—Section 16 of the Securities Exchange Act of 1934 (15 U.S.C. 78p) is amended by adding at the end the following new subsection:

''(g) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.''.

(i) MATERIAL NONPUBLIC INFORMATION.—Section 20(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78t(d)) is amended to read as follows:

''(d) Wherever communicating, or purchasing or selling a security while in possession of, material nonpublic information would violate, or result in liability to any purchaser or seller of the security under any provisions of this title, or any rule or regulation thereunder, such conduct in connection with a purchase or sale of a put, call, straddle, option, privilege or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act) with respect to such security or with respect to a group or index of securities including such security, shall also violate and result in comparable liability to any purchaser or seller of that security under such provision, rule, or regulation.''.

(j) LIMITATION.—Section 20 of the Securities Exchange Act of 1934 (15 U.S.C. 78t) is amended by adding at the end the following new subsection:

''(f) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.''.

(k) CIVIL PENALTIES.—Section 21A(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1)a)(1)) is amended by inserting after ''purchasing or selling a security'' the following: ''or security-based swap agreement (as defined in section 206B of the Gramm-Leach-Bliley Act)''.

(l) LIMITATION.—Section 21A of the Securities Exchange Act of 1934 (15 U.S.C. 78u–1) is amended by adding at the end the following new subsection:

''(g) The authority of the Commission under this section with respect to security-based swap agreements (as defined in section 206B of the Gramm-Leach-Bliley Act) shall be subject to the restrictions and limitations of section 3A(b) of this title.''.

SEC. 304. SAVINGS PROVISIONS.

Nothing in this Act or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a security for any purpose under the securities laws. Nothing in this Act or the amendments made by this Act shall be construed as finding or implying that any swap agreement is or is not a futures contract or commodity option for any purpose under the Commodity Exchange Act.

TITLE IV—REGULATORY RESPONSIBILITY FOR BANK PRODUCTS

SEC. 401. SHORT TITLE.

This title may be cited as the ''Legal Certainty for Bank Products Act of 2000''.

SEC. 402. DEFINITIONS.

(a) BANK.—In this title, the term ''bank'' means—

(1) any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act);

(2) any foreign bank or branch or agency of a foreign bank (each as defined in section 1(b) of the International Banking Act of 1978);

(3) any Federal or State credit union (as defined in section 101 of the Federal Credit Union Act);

(4) any corporation organized under section 25A of the Federal Reserve Act;

(5) any corporation operating under section 25 of the Federal Reserve Act;

(6) any trust company; or

(7) any subsidiary of any entity described in paragraph (1) through (6) of this subsection, if the subsidiary is regulated as if the subsidiary were part of the entity and is not a broker or dealer (as such terms are defined in section 3 of the Securities Exchange Act of 1934) or a futures commission merchant (as defined in section 1a(20) of the Commodity Exchange Act).

(b) IDENTIFIED BANKING PRODUCT.—In this title, the term ''identified banking product'' shall have the same meaning as in paragraphs (1) through (5) of section 206(a) of the Gramm-Leach-Bliley Act, except that in applying such section for purposes of this title—

(1) the term ''bank'' shall have the meaning given in subsection (a) of this section; and

(2) the term ''qualified investor'' means eligible contract participant (as defined in section 1a(12) of the Commodity Exchange Act, as in effect on the date of enactment of the Commodity Futures Modernization Act of 2000).

(c) HYBRID INSTRUMENT.—In this title, the term ''hybrid instrument'' means an identified banking product not excluded by section 403 of this Act, offered by a bank, having 1 or more payments indexed to the value, level, or rate of, or providing for the delivery of, 1 or more commodities (as defined in section 1a(4) of the Commodity Exchange Act).

(d) COVERED SWAP AGREEMENT.—In this title, the term ''covered swap agreement'' means a swap agreement (as defined in section 206(b) of the Gramm-Leach-Bliley Act), including a credit or equity swap, based on a commodity other than an agricultural commodity enumerated in section 1a(4) of the Commodity Exchange Act if—

(1) the swap agreement—

(A) is entered into only between persons that are eligible contract participants (as defined in section 1a(12) of the Commodity Exchange Act, as in effect on the date of enactment of the Commodity Futures Modernization Act of 2000) at the time the persons enter into the swap agreement; and

(B) is not entered into or executed on a trading facility (as defined in section 1a(33) of the Commodity Exchange Act); or

(2) the swap agreement—

(A) is entered into or executed on an electronic trading facility (as defined in section 1a(10) of the Commodity Exchange Act);

(B) is entered into on a principal-to-principal basis between parties trading for their own accounts or as described in section 1a(12)(B)(ii) of the Commodity Exchange Act;

(C) is entered into only between persons that are eligible contract participants as described in subparagraphs (A), (B)(ii), or (C) of section 1a(12) of the Commodity Exchange Act, as in effect on the date of enactment of the Commodity Futures Modernization Act of 2000, at the time the persons enter into the swap agreement; and

(D) is an agreement, contract or transaction in an excluded commodity (as defined in section 1a(13) of the Commodity Exchange Act).

SEC. 403. EXCLUSION OF IDENTIFIED BANKING PRODUCTS COMMONLY OFFERED ON OR BEFORE DECEMBER 5, 2000.

No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, an identified banking product if—

(1) an appropriate banking agency certifies that the product has been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law; and

(2) the product was not prohibited by the Commodity Exchange Act and not regulated by the Commodity Futures Trading Commission as a contract of sale of a commodity for future delivery (or an option on such a contract) or an option on a commodity, on or before December 5, 2000.

SEC. 404. EXCLUSION OF CERTAIN IDENTIFIED BANKING PRODUCTS OFFERED BY BANKS AFTER DECEMBER 5, 2000.

No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, an identified banking product which had not been commonly offered, entered into, or provided in the United States by any bank on or before December 5, 2000, under applicable banking law if—

(1) the product has no payment indexed to the value, level, or rate of, and does not provide for the delivery of, any commodity (as defined in section 1a(4) of the Commodity Exchange Act); or

(2) the product or commodity is otherwise excluded from the Commodity Exchange Act.

SEC. 405. EXCLUSION OF CERTAIN OTHER IDENTIFIED BANKING PRODUCTS.

(a) IN GENERAL.—No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a banking product if the product is a hybrid instrument that is predominantly a banking product under the predominance test set forth in subsection (b).

(b) PREDOMINANCE TEST.—A hybrid instrument shall be considered to be predominantly a banking product for purposes of this section if—

(1) the issuer of the hybrid instrument receives payment in full of the purchase price of the hybrid instrument substantially contemporaneously with delivery of the hybrid instrument;

(2) the purchaser or holder of the hybrid instrument is not required to make under the terms of the instrument, or any arrangement referred to in the instrument, any payment to the issuer in addition to the purchase price referred to in paragraph (1), whether as margin, settlement payment, or otherwise during the life of the hybrid instrument or at maturity;

(3) the issuer of the hybrid instrument is not subject by the terms of the instrument to mark-to-market margining requirements; and

(4) the hybrid instrument is not marketed as a contract of sale of a commodity for future delivery (or option on such a contract) subject to the Commodity Exchange Act.

(c) MARK-TO-MARKET MARGINING REQUIREMENT.—For purposes of subsection (b)(3), mark-

to-market margining requirements shall not include the obligation of an issuer of a secured debt instrument to increase the amount of collateral held in pledge for the benefit of the purchaser of the secured debt instrument to secure the repayment obligations of the issuer under the secured debt instrument.

SEC. 406. ADMINISTRATION OF THE PREDOMINANCE TEST.

(a) IN GENERAL.—No provision of the Commodity Exchange Act shall apply to, and the Commodity Futures Trading Commission shall not regulate, a hybrid instrument, unless the Commission determines, by or under a rule issued in accordance with this section, that—

(1) the action is necessary and appropriate in the public interest;

(2) the action is consistent with the Commodity Exchange Act and the purposes of the Commodity Exchange Act; and

(3) the hybrid instrument is not predominantly a banking product under the predominance test set forth in section 405(b) of this Act.

(b) CONSULTATION.—Before commencing a rulemaking or making a determination pursuant to a rule issued under this title, the Commodity Futures Trading Commission shall consult with and seek the concurrence of the Board of Governors of the Federal Reserve System concerning—

(1) the nature of the hybrid instrument; and

(2) the history, purpose, extent, and appropriateness of the regulation of the hybrid instrument under the Commodity Exchange Act and under appropriate banking laws.

(c) OBJECTION TO COMMISSION REGULATION.—

(1) FILING OF PETITION FOR REVIEW.—The Board of Governors of the Federal Reserve System may obtain review of any rule or determination referred to in subsection (a) in the United States Court of Appeals for the District of Columbia Circuit by filing in the court, not later than 60 days after the date of publication of the rule or determination, a written petition requesting that the rule or determination be set aside. Any proceeding to challenge any such rule or determination shall be expedited by the court.

(2) TRANSMITTAL OF PETITION AND RECORD.—A copy of a petition described in paragraph (1) shall be transmitted as soon as possible by the Clerk of the court to an officer or employee of the Commodity Futures Trading Commission designated for that purpose. Upon receipt of the petition, the Commission shall file with the court the rule or determination under review and any documents referred to therein, and any other relevant materials prescribed by the court.

(3) EXCLUSIVE JURISDICTION.—On the date of the filing of a petition under paragraph (1), the court shall have jurisdiction, which shall become exclusive on the filing of the materials set forth in paragraph (2), to affirm and enforce or to set aside the rule or determination at issue.

(4) STANDARD OF REVIEW.—The court shall determine to affirm and enforce or set aside a rule or determination of the Commodity Futures Trading Commission under this section, based on the determination of the court as to whether—

(A) the subject product is predominantly a banking product; and

(B) making the provision or provisions of the Commodity Exchange Act at issue applicable to the subject instrument is appropriate in light of the history, purpose, and extent of regulation under such Act, this title, and under the appropriate banking laws, giving deference neither to the views of the Commodity Futures Trading Commission nor the Board of Governors of the Federal Reserve System.

(5) JUDICIAL STAY.—The filing of a petition by the Board pursuant to paragraph (1) shall operate as a judicial stay, until the date on which the determination of the court is final (including any appeal of the determination).

(6) OTHER AUTHORITY TO CHALLENGE.—Any aggrieved party may seek judicial review pursuant to section 6(c) of the Commodity Exchange Act of a determination or rulemaking by the Commodity Futures Trading Commission under this section.

SEC. 407. EXCLUSION OF COVERED SWAP AGREEMENTS.

No provision of the Commodity Exchange Act (other than section 5b of such Act with respect to the clearing of covered swap agreements) shall apply to, and the Commodity Futures Trading Commission shall not exercise regulatory authority with respect to, a covered swap agreement offered, entered into, or provided by a bank.

SEC. 408. CONTRACT ENFORCEMENT.

(a) HYBRID INSTRUMENTS.—No hybrid instrument shall be void, voidable, or unenforceable, and no party to a hybrid instrument shall be entitled to rescind, or recover any payment made with respect to, a hybrid instrument under any provision of Federal or State law, based solely on the failure of the hybrid instrument to satisfy the predominance test set forth in section 405(b) of this Act or to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act or any regulation of the Commodity Futures Trading Commission.

(b) COVERED SWAP AGREEMENTS.—No covered swap agreement shall be void, voidable, or unenforceable, and no party to a covered swap agreement shall be entitled to rescind, or recover any payment made with respect to, a covered swap agreement under any provision of Federal or State law, based solely on the failure of the covered swap agreement to comply with the terms or conditions of an exemption or exclusion from any provision of the Commodity Exchange Act or any regulation of the Commodity Futures Trading Commission.

(c) PREEMPTION.—This title shall supersede and preempt the application of any State or local law that prohibits or regulates gaming or the operation of bucket shops (other than antifraud provisions of general applicability) in the case of—

(1) a hybrid instrument that is predominantly a banking product; or

(2) a covered swap agreement.

MEDICARE, MEDICAID, AND SCHIP BENEFITS IMPROVEMENT AND PROTECTION ACT OF 2000

The conference agreement would enact the provisions of H.R. 5661, as introduced on December 14, 2000. The text of that bill follows:

A BILL To amend titles XVIII, XIX, and XXI of the Social Security Act to provide benefits improvements and beneficiary protections in the Medicare and Medicaid Programs and the State child health insurance program (SCHIP), as revised by the Balanced Budget Act of 1997 and the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; AMENDMENTS TO SOCIAL SECURITY ACT; REFERENCES TO OTHER ACTS; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000''.

(b) AMENDMENTS TO SOCIAL SECURITY ACT.—Except as otherwise specifically provided, whenever in this Act an amendment is expressed in terms of an amendment to or repeal of a section or other provision, the reference shall be considered to be made to that section or other provision of the Social Security Act.

(c) REFERENCES TO OTHER ACTS.—In this Act:

(1) BALANCED BUDGET ACT OF 1997.—The term ''BBA'' means the Balanced Budget Act of 1997 (Public Law 105–33; 111 Stat. 251).

(2) MEDICARE, MEDICAID, AND SCHIP BALANCED BUDGET REFINEMENT ACT OF 1999.—The term ''BBRA'' means the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (Appendix F, 113 Stat. 1501A–321), as enacted into law by section 1000(a)(6) of Public Law 106–113.

(d) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

Sec. 1. Short title; amendments to Social Security Act; references to other Acts; table of contents.

TITLE I—MEDICARE BENEFICIARY IMPROVEMENTS

Subtitle A—Improved Preventive Benefits

Sec. 101. Coverage of biennial screening pap smear and pelvic exams.
Sec. 102. Coverage of screening for glaucoma.
Sec. 103. Coverage of screening colonoscopy for average risk individuals.
Sec. 104. Modernization of screening mammography benefit.
Sec. 105. Coverage of medical nutrition therapy services for beneficiaries with diabetes or a renal disease.

Subtitle B—Other Beneficiary Improvements

Sec. 111. Acceleration of reduction of beneficiary copayment for hospital outpatient department services.
Sec. 112. Preservation of coverage of drugs and biologicals under part B of the medicare program.
Sec. 113. Elimination of time limitation on medicare benefits for immunosuppressive drugs.
Sec. 114. Imposition of billing limits on drugs.
Sec. 115. Waiver of 24-month waiting period for medicare coverage of individuals disabled with amyotrophic lateral sclerosis (ALS).

Subtitle C—Demonstration Projects and Studies

Sec. 121. Demonstration project for disease management for severely chronically ill medicare beneficiaries.
Sec. 122. Cancer prevention and treatment demonstration for ethnic and racial minorities.
Sec. 123. Study on medicare coverage of routine thyroid screening.
Sec. 124. MedPAC study on consumer coalitions.
Sec. 125. Study on limitation on State payment for medicare cost-sharing affecting access to services for qualified medicare beneficiaries.
Sec. 126. Studies on preventive interventions in primary care for older Americans.
Sec. 127. MedPAC study and report on medicare coverage of cardiac and pulmonary rehabilitation therapy services.
Sec. 128. Lifestyle modification program demonstration.

TITLE II—RURAL HEALTH CARE IMPROVEMENTS

Subtitle A—Critical Access Hospital Provisions

Sec. 201. Clarification of no beneficiary cost-sharing for clinical diagnostic laboratory tests furnished by critical access hospitals.
Sec. 202. Assistance with fee schedule payment for professional services under all-inclusive rate.
Sec. 203. Exemption of critical access hospital swing beds from SNF PPS.
Sec. 204. Payment in critical access hospitals for emergency room on-call physicians.
Sec. 205. Treatment of ambulance services furnished by certain critical access hospitals.
Sec. 206. GAO study on certain eligibility requirements for critical access hospitals.

Subtitle B—Other Rural Hospitals Provisions

Sec. 211. Treatment of rural disproportionate share hospitals.

Sec. 212. Option to base eligibility for medicare dependent, small rural hospital program on discharges during 2 of the 3 most recently audited cost reporting periods.
Sec. 213. Extension of option to use rebased target amounts to all sole community hospitals.
Sec. 214. MedPAC analysis of impact of volume on per unit cost of rural hospitals with psychiatric units.

Subtitle C—Other Rural Provisions

Sec. 221. Assistance for providers of ambulance services in rural areas.
Sec. 222. Payment for certain physician assistant services.
Sec. 223. Revision of medicare reimbursement for telehealth services.
Sec. 224. Expanding access to rural health clinics.
Sec. 225. MedPAC study on low-volume, isolated rural health care providers.

TITLE III—PROVISIONS RELATING TO PART A

Subtitle A—Inpatient Hospital Services

Sec. 301. Revision of acute care hospital payment update for 2001.
Sec. 302. Additional modification in transition for indirect medical education (IME) percentage adjustment.
Sec. 303. Decrease in reductions for disproportionate share hospital (DSH) payments.
Sec. 304. Wage index improvements.
Sec. 305. Payment for inpatient services of rehabilitation hospitals.
Sec. 306. Payment for inpatient services of psychiatric hospitals.
Sec. 307. Payment for inpatient services of long-term care hospitals.

Subtitle B—Adjustments to PPS Payments for Skilled Nursing Facilities

Sec. 311. Elimination of reduction in skilled nursing facility (SNF) market basket update in 2001.
Sec. 312. Increase in nursing component of PPS Federal rate.
Sec. 313. Application of SNF consolidated billing requirement limited to part A covered stays.
Sec. 314. Adjustment of rehabilitation RUGs to correct anomaly in payment rates.
Sec. 315. Establishment of process for geographic reclassification.

Subtitle C—Hospice Care

Sec. 321. 5 percent increase in payment base.
Sec. 322. Clarification of physician certification.
Sec. 323. MedPAC report on access to, and use of, hospice benefit.

Subtitle D—Other Provisions

Sec. 331. Relief from medicare part A late enrollment penalty for group buy-in for State and local retirees.

TITLE IV—PROVISIONS RELATING TO PART B

Subtitle A—Hospital Outpatient Services

Sec. 401. Revision of hospital outpatient PPS payment update.
Sec. 402. Clarifying process and standards for determining eligibility of devices for pass-through payments under hospital outpatient PPS.
Sec. 403. Application of OPD PPS transitional corridor payments to certain hospitals that did not submit a 1996 cost report.
Sec. 404. Application of rules for determining provider-based status for certain entities.
Sec. 405. Treatment of children's hospitals under prospective payment system.
Sec. 406. Inclusion of temperature monitored cryoablation in transitional pass-through for certain medical devices, drugs, and biologicals under OPD PPS.

Subtitle B—Provisions Relating to Physicians' Services

Sec. 411. GAO studies relating to physicians' services.
Sec. 412. Physician group practice demonstration.
Sec. 413. Study on enrollment procedures for groups that retain independent contractor physicians.

Subtitle C—Other Services

Sec. 421. 1-year extension of moratorium on therapy caps; report on standards for supervision of physical therapy assistants.
Sec. 422. Update in renal dialysis composite rate.
Sec. 423. Payment for ambulance services.
Sec. 424. Ambulatory surgical centers.
Sec. 425. Full update for durable medical equipment.
Sec. 426. Full update for orthotics and prosthetics.
Sec. 427. Establishment of special payment provisions and requirements for prosthetics and certain custom-fabricated orthotic items.
Sec. 428. Replacement of prosthetic devices and parts.
Sec. 429. Revised part B payment for drugs and biologicals and related services.
Sec. 430. Contrast enhanced diagnostic procedures under hospital prospective payment system.
Sec. 431. Qualifications for community mental health centers.
Sec. 432. Payment of physician and nonphysician services in certain Indian providers.
Sec. 433. GAO study on coverage of surgical first assisting services of certified registered nurse first assistants.
Sec. 434. MedPAC study and report on medicare reimbursement for services provided by certain providers.
Sec. 435. MedPAC study and report on medicare coverage of services provided by certain nonphysician providers.
Sec. 436. GAO study and report on the costs of emergency and medical transportation services.
Sec. 437. GAO studies and reports on medicare payments.
Sec. 438. MedPAC study on access to outpatient pain management services.

TITLE V—PROVISIONS RELATING TO PARTS A AND B

Subtitle A—Home Health Services

Sec. 501. 1-year additional delay in application of 15 percent reduction on payment limits for home health services.
Sec. 502. Restoration of full home health market basket update for home health services for fiscal year 2001.
Sec. 503. Temporary two-month periodic interim payment.
Sec. 504. Use of telehealth in delivery of home health services.
Sec. 505. Study on costs to home health agencies of purchasing nonroutine medical supplies.
Sec. 506. Treatment of branch offices; GAO study on supervision of home health care provided in isolated rural areas.
Sec. 507. Clarification of the homebound definition under the medicare home health benefit.
Sec. 508. Temporary increase for home health services furnished in a rural area.

Subtitle B—Direct Graduate Medical Education

Sec. 511. Increase in floor for direct graduate medical education payments.
Sec. 512. Change in distribution formula for Medicare+Choice-related nursing and allied health education costs.

Subtitle C—Changes in Medicare Coverage and Appeals Process

Sec. 521. Revisions to medicare appeals process.
Sec. 522. Revisions to medicare coverage process.

Subtitle D—Improving Access to New Technologies

Sec. 531. Reimbursement improvements for new clinical laboratory tests and durable medical equipment.
Sec. 532. Retention of HCPCS level III codes.
Sec. 533. Recognition of new medical technologies under inpatient hospital PPS.

Subtitle E—Other Provisions

Sec. 541. Increase in reimbursement for bad debt.
Sec. 542. Treatment of certain physician pathology services under medicare.
Sec. 543. Extension of advisory opinion authority.
Sec. 544. Change in annual MedPAC reporting.
Sec. 545. Development of patient assessment instruments.
Sec. 546. GAO report on impact of the Emergency Medical Treatment and Active Labor Act (EMTALA) on hospital emergency departments.
Sec. 547. Clarification of application of temporary payment increases for 2001.

TITLE VI—PROVISIONS RELATING TO PART C (MEDICARE+CHOICE PROGRAM) AND OTHER MEDICARE MANAGED CARE PROVISIONS

Subtitle A—Medicare+Choice Payment Reforms

Sec. 601. Increase in minimum payment amount.
Sec. 602. Increase in minimum percentage increase.
Sec. 603. Phase-in of risk adjustment.
Sec. 604. Transition to revised Medicare+Choice payment rates.
Sec. 605. Revision of payment rates for ESRD patients enrolled in Medicare+Choice plans.
Sec. 606. Permitting premium reductions as additional benefits under Medicare+Choice plans.
Sec. 607. Full implementation of risk adjustment for congestive heart failure enrollees for 2001.
Sec. 608. Expansion of application of Medicare+Choice new entry bonus.
Sec. 609. Report on inclusion of certain costs of the Department of Veterans Affairs and military facility services in calculating Medicare+Choice payment rates.

Subtitle B—Other Medicare+Choice Reforms

Sec. 611. Payment of additional amounts for new benefits covered during a contract term.
Sec. 612. Restriction on implementation of significant new regulatory requirements midyear.
Sec. 613. Timely approval of marketing material that follows model marketing language.
Sec. 614. Avoiding duplicative regulation.
Sec. 615. Election of uniform local coverage policy for Medicare+Choice plan covering multiple localities.
Sec. 616. Eliminating health disparities in Medicare+Choice program.
Sec. 617. Medicare+Choice program compatibility with employer or union group health plans.
Sec. 618. Special medigap enrollment antidiscrimination provision for certain beneficiaries.

Sec. 619. Restoring effective date of elections and changes of elections of Medicare+Choice plans.
Sec. 620. Permitting ESRD beneficiaries to enroll in another Medicare+Choice plan if the plan in which they are enrolled is terminated.
Sec. 621. Providing choice for skilled nursing facility services under the Medicare+Choice program.
Sec. 622. Providing for accountability of Medicare+Choice plans.
Sec. 623. Increased civil money penalty for Medicare+Choice organizations that terminate contracts mid-year.

Subtitle C—Other Managed Care Reforms

Sec. 631. 1-year extension of social health maintenance organization (SHMO) demonstration project.
Sec. 632. Revised terms and conditions for extension of medicare community nursing organization (CNO) demonstration project.
Sec. 633. Extension of medicare municipal health services demonstration projects.
Sec. 634. Service area expansion for medicare cost contracts during transition period.

TITLE VII—MEDICAID

Sec. 701. DSH payments.
Sec. 702. New prospective payment system for Federally-qualified health centers and rural health clinics.
Sec. 703. Streamlined approval of continued State-wide section 1115 medicaid waivers.
Sec. 704. Medicaid county-organized health systems.
Sec. 705. Deadline for issuance of final regulation relating to medicaid upper payment limits.
Sec. 706. Alaska FMAP.
Sec. 707. 1-year extension of welfare-to-work transition.
Sec. 708. Additional entities qualified to determine medicaid presumptive eligibility for low-income children.
Sec. 709. Development of uniform QMB/SLMB application form.
Sec. 710. Technical corrections.

TITLE VIII—STATE CHILDREN'S HEALTH INSURANCE PROGRAM

Sec. 801. Special rule for redistribution and availability of unused fiscal year 1998 and 1999 SCHIP allotments.
Sec. 802. Authority to pay medicaid expansion SCHIP costs from title XXI appropriation.
Sec. 803. Application of medicaid child presumptive eligibility provisions.

TITLE IX—OTHER PROVISIONS

Subtitle A—PACE Program

Sec. 901. Extension of transition for current waivers.
Sec. 902. Continuing of certain operating arrangements permitted.
Sec. 903. Flexibility in exercising waiver authority.

Subtitle B—Outreach to Eligible Low-Income Medicare Beneficiaries

Sec. 911. Outreach on availability of medicare cost-sharing assistance to eligible low-income medicare beneficiaries.

Subtitle C—Maternal and Child Health Block Grant

Sec. 921. Increase in authorization of appropriations for the maternal and child health services block grant.

Subtitle D—Diabetes

Sec. 931. Increase in appropriations for special diabetes programs for type I diabetes and Indians.
Sec. 932. Appropriations for Ricky Ray Hemophilia Relief Fund.

Subtitle E—Information on Nursing Facility Staffing

Sec. 941. Posting of information on nursing facility staffing.

Subtitle F—Adjustment of Multiemployer Plan Benefits Guaranteed

Sec. 951. Multiemployer plan benefits guaranteed.

TITLE I—MEDICARE BENEFICIARY IMPROVEMENTS

Subtitle A—Improved Preventive Benefits

SEC. 101. COVERAGE OF BIENNIAL SCREENING PAP SMEAR AND PELVIC EXAMS.

(a) IN GENERAL.—

(1) BIENNIAL SCREENING PAP SMEAR.—Section 1861(nn)(1) (42 U.S.C. 1395x(nn)(1)) is amended by striking ''3 years'' and inserting ''2 years''.

(2) BIENNIAL SCREENING PELVIC EXAM.—Section 1861(nn)(2) (42 U.S.C. 1395x(nn)(2)) is amended by striking ''3 years'' and inserting ''2 years''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall apply to items and services furnished on or after July 1, 2001.

SEC. 102. COVERAGE OF SCREENING FOR GLAUCOMA.

(a) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended—

(1) by striking ''and'' at the end of subparagraph (S);

(2) by inserting ''and'' at the end of subparagraph (T); and

(3) by adding at the end the following:

''(U) screening for glaucoma (as defined in subsection (uu)) for individuals determined to be at high risk for glaucoma, individuals with a family history of glaucoma and individuals with diabetes;''.

(b) SERVICES DESCRIBED.—Section 1861 (42 U.S.C. 1395x) is amended by adding at the end the following new subsection:

''Screening for Glaucoma

''(uu) The term 'screening for glaucoma' means a dilated eye examination with an intraocular pressure measurement, and a direct ophthalmoscopy or a slit-lamp biomicroscopic examination for the early detection of glaucoma which is furnished by or under the direct supervision of an optometrist or ophthalmologist who is legally authorized to furnish such services under State law (or the State regulatory mechanism provided by State law) of the State in which the services are furnished, as would otherwise be covered if furnished by a physician or as an incident to a physician's professional service, if the individual involved has not had such an examination in the preceding year.''.

(c) CONFORMING AMENDMENT.—Section 1862(a)(1)(F) (42 U.S.C. 1395y(a)(1)(F)) is amended—

(1) by striking ''and,''; and

(2) by adding at the end the following: ''and, in the case of screening for glaucoma, which is performed more frequently than is provided under section 1861(uu),''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2002.

SEC. 103. COVERAGE OF SCREENING COLONOSCOPY FOR AVERAGE RISK INDIVIDUALS.

(a) IN GENERAL.—Section 1861(pp) (42 U.S.C. 1395x(pp)) is amended—

(1) in paragraph (1)(C), by striking ''In the case of an individual at high risk for colorectal cancer, screening colonoscopy'' and inserting ''Screening colonoscopy''; and

(2) in paragraph (2), by striking ''In paragraph (1)(C), an'' and inserting ''An''.

(b) FREQUENCY LIMITS FOR SCREENING COLONOSCOPY.—Section 1834(d) (42 U.S.C. 1395m(d)) is amended—

(1) in paragraph (2)(E)(ii), by inserting before the period at the end the following: ''or, in the case of an individual who is not at high risk for colorectal cancer, if the procedure is performed within the 119 months after a previous screening colonoscopy''; and

(2) in paragraph (3)—

(A) in the heading by striking ''FOR INDIVIDUALS AT HIGH RISK FOR COLORECTAL CANCER'';

(B) in subparagraph (A), by striking ''for individuals at high risk for colorectal cancer (as defined in section 1861(pp)(2))''; and

(C) in subparagraph (E), by inserting before the period at the end the following: ''or for other individuals if the procedure is performed within the 119 months after a previous screening colonoscopy or within 47 months after a previous screening flexible sigmoidoscopy''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to colorectal cancer screening services provided on or after July 1, 2001.

SEC. 104. MODERNIZATION OF SCREENING MAMMOGRAPHY BENEFIT.

(a) INCLUSION IN PHYSICIAN FEE SCHEDULE.—Section 1848(j)(3) (42 U.S.C. 1395w–4(j)(3)) is amended by inserting ''(13),'' after ''(4),''.

(b) CONFORMING AMENDMENT.—Section 1834(c) (42 U.S.C. 1395m(c)) is amended to read as follows:

''(c) PAYMENT AND STANDARDS FOR SCREENING MAMMOGRAPHY.—

''(1) IN GENERAL.—With respect to expenses incurred for screening mammography (as defined in section 1861(jj)), payment may be made only—

''(A) for screening mammography conducted consistent with the frequency permitted under paragraph (2); and

''(B) if the screening mammography is conducted by a facility that has a certificate (or provisional certificate) issued under section 354 of the Public Health Service Act.

''(2) FREQUENCY COVERED.—

''(A) IN GENERAL.—Subject to revision by the Secretary under subparagraph (B)—

''(i) no payment may be made under this part for screening mammography performed on a woman under 35 years of age;

''(ii) payment may be made under this part for only one screening mammography performed on a woman over 34 years of age, but under 40 years of age; and

''(iii) in the case of a woman over 39 years of age, payment may not be made under this part for screening mammography performed within 11 months following the month in which a previous screening mammography was performed.

''(B) REVISION OF FREQUENCY.—

''(i) REVIEW.—The Secretary, in consultation with the Director of the National Cancer Institute, shall review periodically the appropriate frequency for performing screening mammography, based on age and such other factors as the Secretary believes to be pertinent.

''(ii) REVISION OF FREQUENCY.—The Secretary, taking into consideration the review made under clause (i), may revise from time to time the frequency with which screening mammography may be paid for under this subsection.''.

(c) EFFECTIVE DATE.—The amendments made by subsections (a) and (b) shall apply with respect to screening mammographies furnished on or after January 1, 2002.

(d) PAYMENT FOR NEW TECHNOLOGIES.—

(1) TESTS FURNISHED IN 2001.—

(A) SCREENING.—For a screening mammography (as defined in section 1861(jj) of the Social Security Act (42 U.S.C. 1395x(jj))) furnished during the period beginning on April 1, 2001, and ending on December 31, 2001, that uses a new technology, payment for such screening mammography shall be made as follows:

(i) In the case of a technology which directly takes a digital image (without involving film), in an amount equal to 150 percent of the amount of payment under section 1848 of such Act (42 U.S.C. 1395w–4) for a bilateral diagnostic mammography (under HCPCS code 76091) for such year.

(ii) In the case of a technology which allows conversion of a standard film mammogram into a digital image and subsequently analyzes such

resulting image with software to identify possible problem areas, in an amount equal to the limit that would otherwise be applied under section 1834(c)(3) of such Act (42 U.S.C. 1395m(c)(3)) for 2001, increased by $15.

(B) BILATERAL DIAGNOSTIC MAMMOGRAPHY.—For a bilateral diagnostic mammography furnished during the period beginning on April 1, 2001, and ending on December 31, 2001, that uses a new technology described in subparagraph (A), payment for such mammography shall be the amount of payment provided for under such subparagraph.

(C) ALLOCATION OF AMOUNTS.—The Secretary shall provide for an appropriate allocation of the amounts under subparagraphs (A) and (B) between the professional and technical components.

(D) IMPLEMENTATION OF PROVISION.—The Secretary of Health and Human Services may implement the provisions of this paragraph by program memorandum or otherwise.

(2) CONSIDERATION OF NEW HCPCS CODE FOR NEW TECHNOLOGIES AFTER 2001.—The Secretary shall determine, for such mammographies performed after 2001, whether the assignment of a new HCPCS code is appropriate for mammography that uses a new technology. If the Secretary determines that a new code is appropriate for such mammography, the Secretary shall provide for such new code for such tests furnished after 2001.

(3) NEW TECHNOLOGY DESCRIBED.—For purposes of this subsection, a new technology with respect to a mammography is an advance in technology with respect to the test or equipment that results in the following:

(A) A significant increase or decrease in the resources used in the test or in the manufacture of the equipment.

(B) A significant improvement in the performance of the test or equipment.

(C) A significant advance in medical technology that is expected to significantly improve the treatment of medicare beneficiaries.

(4) HCPCS CODE DEFINED.—The term ''HCPCS code'' means a code under the Health Care Financing Administration Common Procedure Coding System (HCPCS).

SEC. 105. COVERAGE OF MEDICAL NUTRITION THERAPY SERVICES FOR BENEFICIARIES WITH DIABETES OR A RENAL DISEASE.

(a) COVERAGE.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)), as amended by section 102(a), is amended—

(1) in subparagraph (T), by striking ''and'' at the end;

(2) in subparagraph (U), by inserting ''and'' at the end; and

(3) by adding at the end the following new subparagraph:

''(V) medical nutrition therapy services (as defined in subsection (vv)(1)) in the case of a beneficiary with diabetes or a renal disease who—

''(i) has not received diabetes outpatient self-management training services within a time period determined by the Secretary;

''(ii) is not receiving maintenance dialysis for which payment is made under section 1881; and

''(iii) meets such other criteria determined by the Secretary after consideration of protocols established by dietitian or nutrition professional organizations;''.

(b) SERVICES DESCRIBED.—Section 1861 (42 U.S.C. 1395x), as amended by section 102(b), is amended by adding at the end the following:

''Medical Nutrition Therapy Services; Registered Dietitian or Nutrition Professional

''(vv)(1) The term 'medical nutrition therapy services' means nutritional diagnostic, therapy, and counseling services for the purpose of disease management which are furnished by a registered dietitian or nutrition professional (as defined in paragraph (2)) pursuant to a referral by a physician (as defined in subsection (r)(1)).

''(2) Subject to paragraph (3), the term 'registered dietitian or nutrition professional' means an individual who—

''(A) holds a baccalaureate or higher degree granted by a regionally accredited college or university in the United States (or an equivalent foreign degree) with completion of the academic requirements of a program in nutrition or dietetics, as accredited by an appropriate national accreditation organization recognized by the Secretary for this purpose;

''(B) has completed at least 900 hours of supervised dietetics practice under the supervision of a registered dietitian or nutrition professional; and

''(C)(i) is licensed or certified as a dietitian or nutrition professional by the State in which the services are performed; or

''(ii) in the case of an individual in a State that does not provide for such licensure or certification, meets such other criteria as the Secretary establishes.

''(3) Subparagraphs (A) and (B) of paragraph (2) shall not apply in the case of an individual who, as of the date of the enactment of this subsection, is licensed or certified as a dietitian or nutrition professional by the State in which medical nutrition therapy services are performed.''.

(c) PAYMENT.—Section 1833(a)(1) (42 U.S.C. 1395l(a)(1)) is amended—

(1) by striking ''and'' before ''(S)''; and

(2) by inserting before the semicolon at the end the following: '', and (T) with respect to medical nutrition therapy services (as defined in section 1861(vv)), the amount paid shall be 80 percent of the lesser of the actual charge for the services or 85 percent of the amount determined under the fee schedule established under section 1848(b) for the same services if furnished by a physician''.

(d) APPLICATION OF LIMITS ON BILLING.—Section 1842(b)(18)(C) (42 U.S.C. 1395u(b)(18)(C)) is amended by adding at the end the following new clause:

''(vi) A registered dietitian or nutrition professional.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after January 1, 2002.

(f) STUDY.—Not later than July 1, 2003, the Secretary of Health and Human Services shall submit to Congress a report that contains recommendations with respect to the expansion to other medicare beneficiary populations of the medical nutrition therapy services benefit (furnished under the amendments made by this section).

Subtitle B—Other Beneficiary Improvements

SEC. 111. ACCELERATION OF REDUCTION OF BENEFICIARY COPAYMENT FOR HOSPITAL OUTPATIENT DEPARTMENT SERVICES.

(a) REDUCING THE UPPER LIMIT ON BENEFICIARY COPAYMENT.—

(1) IN GENERAL.—Section 1833(t)(8)(C) (42 U.S.C. 1395l(t)(8)(C)) is amended to read as follows:

''(C) LIMITATION ON COPAYMENT AMOUNT.—

''(i) TO INPATIENT HOSPITAL DEDUCTIBLE AMOUNT.—In no case shall the copayment amount for a procedure performed in a year exceed the amount of the inpatient hospital deductible established under section 1813(b) for that year.

''(ii) TO SPECIFIED PERCENTAGE.—The Secretary shall reduce the national unadjusted copayment amount for a covered OPD service (or group of such services) furnished in a year in a manner so that the effective copayment rate (determined on a national unadjusted basis) for that service in the year does not exceed the following percentage:

''(I) For procedures performed in 2001, on or after April 1, 2001, 57 percent.

''(II) For procedures performed in 2002 or 2003, 55 percent.

''(III) For procedures performed in 2004, 50 percent.

''(IV) For procedures performed in 2005, 45 percent.

''(V) For procedures performed in 2006 and thereafter, 40 percent.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply with respect to services furnished on or after April 1, 2001.

(b) CONSTRUCTION REGARDING LIMITING INCREASES IN COST-SHARING.—Nothing in this Act or the Social Security Act shall be construed as preventing a hospital from waiving the amount of any coinsurance for outpatient hospital services under the medicare program under title XVIII of the Social Security Act that may have been increased as a result of the implementation of the prospective payment system under section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)).

(c) GAO STUDY OF REDUCTION IN MEDIGAP PREMIUM LEVELS RESULTING FROM REDUCTIONS IN COINSURANCE.—The Comptroller General of the United States shall work, in concert with the National Association of Insurance Commissioners, to evaluate the extent to which the premium levels for medicare supplemental policies reflect the reductions in coinsurance resulting from the amendment made by subsection (a). Not later than April 1, 2004, the Comptroller General shall submit to Congress a report on such evaluation and the extent to which the reductions in beneficiary coinsurance effected by such amendment have resulted in actual savings to medicare beneficiaries.

SEC. 112. PRESERVATION OF COVERAGE OF DRUGS AND BIOLOGICALS UNDER PART B OF THE MEDICARE PROGRAM.

(a) IN GENERAL.—Section 1861(s)(2) (42 U.S.C. 1395x(s)(2)) is amended, in each of subparagraphs (A) and (B), by striking ''(including drugs and biologicals which cannot, as determined in accordance with regulations, be self-administered)'' and inserting ''(including drugs and biologicals which are not usually self-administered by the patient)''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to drugs and biologicals administered on or after the date of the enactment of this Act.

SEC. 113. ELIMINATION OF TIME LIMITATION ON MEDICARE BENEFITS FOR IMMUNOSUPPRESSIVE DRUGS.

(a) IN GENERAL.—Section 1861(s)(2)(J) (42 U.S.C. 1395x(s)(2)(J)) is amended by striking '', but only'' and all that follows up to the semicolon at the end.

(b) CONFORMING AMENDMENTS.—

(1) EXTENDED COVERAGE.—Section 1832 (42 U.S.C. 1395k) is amended—

(A) by striking subsection (b); and

(B) by redesignating subsection (c) as subsection (b).

(2) PASS-THROUGH; REPORT.—Section 227 of BBRA is amended by striking subsection (d).

(c) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to drugs furnished on or after the date of the enactment of this Act.

SEC. 114. IMPOSITION OF BILLING LIMITS ON DRUGS.

(a) IN GENERAL.—Section 1842(o) (42 U.S.C. 1395u(o)) is amended by adding at the end the following new paragraph:

''(3)(A) Payment for a charge for any drug or biological for which payment may be made under this part may be made only on an assignment-related basis.

''(B) The provisions of subsection (b)(18)(B) shall apply to charges for such drugs or biologicals in the same manner as they apply to services furnished by a practitioner described in subsection (b)(18)(C).''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to items furnished on or after January 1, 2001.

SEC. 115. WAIVER OF 24-MONTH WAITING PERIOD FOR MEDICARE COVERAGE OF INDIVIDUALS DISABLED WITH AMYOTROPHIC LATERAL SCLEROSIS (ALS).

(a) IN GENERAL.—Section 226 (42 U.S.C. 426) is amended—

(1) by redesignating subsection (h) as subsection (j) and by moving such subsection to the end of the section; and

(2) by inserting after subsection (g) the following new subsection:

''(h) For purposes of applying this section in the case of an individual medically determined to have amyotrophic lateral sclerosis (ALS), the following special rules apply:

''(1) Subsection (b) shall be applied as if there were no requirement for any entitlement to benefits, or status, for a period longer than 1 month.

''(2) The entitlement under such subsection shall begin with the first month (rather than twenty-fifth month) of entitlement or status.

''(3) Subsection (f) shall not be applied.''.

(b) CONFORMING AMENDMENT.—Section 1837 (42 U.S.C. 1395p) is amended by adding at the end the following new subsection:

''(j) In applying this section in the case of an individual who is entitled to benefits under part A pursuant to the operation of section 226(h), the following special rules apply:

''(1) The initial enrollment period under subsection (d) shall begin on the first day of the first month in which the individual satisfies the requirement of section 1836(1).

''(2) In applying subsection (g)(1), the initial enrollment period shall begin on the first day of the first month of entitlement to disability insurance benefits referred to in such subsection.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to benefits for months beginning July 1, 2001.

Subtitle C—Demonstration Projects and Studies

SEC. 121. DEMONSTRATION PROJECT FOR DISEASE MANAGEMENT FOR SEVERELY CHRONICALLY ILL MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a demonstration project under this section (in this section referred to as the ''project'') to demonstrate the impact on costs and health outcomes of applying disease management to medicare beneficiaries with diagnosed, advanced-stage congestive heart failure, diabetes, or coronary heart disease. In no case may the number of participants in the project exceed 30,000 at any time.

(b) VOLUNTARY PARTICIPATION.—

(1) ELIGIBILITY.—Medicare beneficiaries are eligible to participate in the project only if—

(A) they meet specific medical criteria demonstrating the appropriate diagnosis and the advanced nature of their disease;

(B) their physicians approve of participation in the project; and

(C) they are not enrolled in a Medicare+Choice plan.

(2) BENEFITS.—A beneficiary who is enrolled in the project shall be eligible—

(A) for disease management services related to their chronic health condition; and

(B) for payment for all costs for prescription drugs without regard to whether or not they relate to the chronic health condition, except that the project may provide for modest cost-sharing with respect to prescription drug coverage.

(c) CONTRACTS WITH DISEASE MANAGEMENT ORGANIZATIONS.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall carry out the project through contracts with up to three disease management organizations. The Secretary shall not enter into such a contract with an organization unless the organization demonstrates that it can produce improved health outcomes and reduce aggregate medicare expenditures consistent with paragraph (2).

(2) CONTRACT PROVISIONS.—Under such contracts—

(A) such an organization shall be required to provide for prescription drug coverage described in subsection (b)(2)(B);

(B) such an organization shall be paid a fee negotiated and established by the Secretary in a manner so that (taking into account savings in expenditures under parts A and B of the medicare program under title XVIII of the Social Security Act) there will be a net reduction in expenditures under the medicare program as a result of the project; and

(C) such an organization shall guarantee, through an appropriate arrangement with a reinsurance company or otherwise, the net reduction in expenditures described in subparagraph (B).

(3) PAYMENTS.—Payments to such organizations shall be made in appropriate proportion from the Trust Funds established under title XVIII of the Social Security Act.

(d) APPLICATION OF MEDIGAP PROTECTIONS TO DEMONSTRATION PROJECT ENROLLEES.—(1) Subject to paragraph (2), the provisions of section 1882(s)(3) (other than clauses (i) through (iv) of subparagraph (B)) and 1882(s)(4) of the Social Security Act shall apply to enrollment (and termination of enrollment) in the demonstration project under this section, in the same manner as they apply to enrollment (and termination of enrollment) with a Medicare+Choice organization in a Medicare+Choice plan.

(2) In applying paragraph (1)—

(A) any reference in clause (v) or (vi) of section 1882(s)(3)(B) of such Act to 12 months is deemed a reference to the period of the demonstration project; and

(B) the notification required under section 1882(s)(3)(D) of such Act shall be provided in a manner specified by the Secretary of Health and Human Services.

(e) DURATION.—The project shall last for not longer than 3 years.

(f) WAIVER.—The Secretary of Health and Human Services shall waive such provisions of title XVIII of the Social Security Act as may be necessary to provide for payment for services under the project in accordance with subsection (c)(3).

(g) REPORT.—The Secretary of Health and Human Services shall submit to Congress an interim report on the project not later than 2 years after the date it is first implemented and a final report on the project not later than 6 months after the date of its completion. Such reports shall include information on the impact of the project on costs and health outcomes and recommendations on the cost-effectiveness of extending or expanding the project.

SEC. 122. CANCER PREVENTION AND TREATMENT DEMONSTRATION FOR ETHNIC AND RACIAL MINORITIES.

(a) DEMONSTRATION.—

(1) IN GENERAL.—The Secretary of Health and Human Services (in this section referred to as the ''Secretary'') shall conduct demonstration projects (in this section referred to as ''demonstration projects'') for the purpose of developing models and evaluating methods that—

(A) improve the quality of items and services provided to target individuals in order to facilitate reduced disparities in early detection and treatment of cancer;

(B) improve clinical outcomes, satisfaction, quality of life, and appropriate use of medicare-covered services and referral patterns among those target individuals with cancer;

(C) eliminate disparities in the rate of preventive cancer screening measures, such as pap smears and prostate cancer screenings, among target individuals; and

(D) promote collaboration with community-based organizations to ensure cultural competency of health care professionals and linguistic access for persons with limited English proficiency.

(2) TARGET INDIVIDUAL DEFINED.—In this section, the term ''target individual'' means an individual of a racial and ethnic minority group, as defined by section 1707 of the Public Health Service Act, who is entitled to benefits under part A, and enrolled under part B, of title XVIII of the Social Security Act.

(b) PROGRAM DESIGN.—

(1) INITIAL DESIGN.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall evaluate best practices in the private sector, community programs, and academic research of methods that reduce disparities among individuals of racial and ethnic minority groups in the prevention and treatment of cancer and shall design the demonstration projects based on such evaluation.

(2) NUMBER AND PROJECT AREAS.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall implement at least 9 demonstration projects, including the following:

(A) 2 projects for each of the 4 following major racial and ethnic minority groups:

(i) American Indians, including Alaska Natives, Eskimos, and Aleuts.

(ii) Asian Americans and Pacific Islanders.

(iii) Blacks.

(iv) Hispanics.

The 2 projects must target different ethnic subpopulations.

(B) 1 project within the Pacific Islands.

(C) At least 1 project each in a rural area and inner-city area.

(3) EXPANSION OF PROJECTS; IMPLEMENTATION OF DEMONSTRATION PROJECT RESULTS.—If the initial report under subsection (c) contains an evaluation that demonstration projects—

(A) reduce expenditures under the medicare program under title XVIII of the Social Security Act; or

(B) do not increase expenditures under the medicare program and reduce racial and ethnic health disparities in the quality of health care services provided to target individuals and increase satisfaction of beneficiaries and health care providers;

the Secretary shall continue the existing demonstration projects and may expand the number of demonstration projects.

(c) REPORT TO CONGRESS.—

(1) IN GENERAL.—Not later than 2 years after the date the Secretary implements the initial demonstration projects, and biannually thereafter, the Secretary shall submit to Congress a report regarding the demonstration projects.

(2) CONTENTS OF REPORT.—Each report under paragraph (1) shall include the following:

(A) A description of the demonstration projects.

(B) An evaluation of—

(i) the cost-effectiveness of the demonstration projects;

(ii) the quality of the health care services provided to target individuals under the demonstration projects; and

(iii) beneficiary and health care provider satisfaction under the demonstration projects.

(C) Any other information regarding the demonstration projects that the Secretary determines to be appropriate.

(d) WAIVER AUTHORITY.—The Secretary shall waive compliance with the requirements of title XVIII of the Social Security Act to such extent and for such period as the Secretary determines is necessary to conduct demonstration projects.

(e) FUNDING.—

(1) DEMONSTRATION PROJECTS.—

(A) STATE PROJECTS.—Except as provided in subparagraph (B), the Secretary shall provide for the transfer from the Federal Hospital Insurance Trust Fund and the Federal Supplementary Insurance Trust Fund under title XVIII of the Social Security Act, in such proportions as the Secretary determines to be appropriate, of such funds as are necessary for the costs of carrying out the demonstration projects.

(B) TERRITORY PROJECTS.—In the case of a demonstration project described in subsection (b)(2)(B), amounts shall be available only as provided in any Federal law making appropriations for the territories.

(2) LIMITATION.—In conducting demonstration projects, the Secretary shall ensure that the aggregate payments made by the Secretary do not exceed the sum of the amount which the Secretary would have paid under the program for

the prevention and treatment of cancer if the demonstration projects were not implemented, plus $25,000,000.

SEC. 123. STUDY ON MEDICARE COVERAGE OF ROUTINE THYROID SCREENING.

(a) STUDY.—The Secretary of Health and Human Services shall request the National Academy of Sciences, and as appropriate in conjunction with the United States Preventive Services Task Force, to conduct a study on the addition of coverage of routine thyroid screening using a thyroid stimulating hormone test as a preventive benefit provided to medicare beneficiaries under title XVIII of the Social Security Act for some or all medicare beneficiaries. In conducting the study, the Academy shall consider the short-term and long-term benefits, and costs to the medicare program, of such addition.

(b) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary of Health and Human Services shall submit a report on the findings of the study conducted under subsection (a) to the Committee on Ways and Means and the Committee on Commerce of the House of Representatives and the Committee on Finance of the Senate.

SEC. 124. MEDPAC STUDY ON CONSUMER COALITIONS.

(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study that examines the use of consumer coalitions in the marketing of Medicare+Choice plans under the medicare program under title XVIII of the Social Security Act. The study shall examine—

(1) the potential for increased efficiency in the medicare program through greater beneficiary knowledge of their health care options, decreased marketing costs of Medicare+Choice organizations, and creation of a group market;

(2) the implications of Medicare+Choice plans and medicare supplemental policies (under section 1882 of the Social Security Act (42 U.S.C. 1395ss)) offering medicare beneficiaries in the same geographic location different benefits and premiums based on their affiliation with a consumer coalition;

(3) how coalitions should be governed, how they should be accountable to the Secretary of Health and Human Services, and how potential conflicts of interest in the activities of consumer coalitions should be avoided; and

(4) how such coalitions should be funded.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under subsection (a). The report shall include a recommendation on whether and how a demonstration project might be conducted for the operation of consumer coalitions under the medicare program.

(c) CONSUMER COALITION DEFINED.—For purposes of this section, the term ''consumer coalition'' means a nonprofit, community-based group of organizations that—

(1) provides information to medicare beneficiaries about their health care options under the medicare program; and

(2) negotiates benefits and premiums for medicare beneficiaries who are members or otherwise affiliated with the group of organizations with Medicare+Choice organizations offering Medicare+Choice plans, issuers of medicare supplemental policies, issuers of long-term care coverage, and pharmacy benefit managers.

SEC. 125. STUDY ON LIMITATION ON STATE PAYMENT FOR MEDICARE COST-SHARING AFFECTING ACCESS TO SERVICES FOR QUALIFIED MEDICARE BENEFICIARIES.

(a) IN GENERAL.—The Secretary of Health and Human Services shall conduct a study to determine if access to certain services (including mental health services) for qualified medicare beneficiaries has been affected by limitations on a State's payment for medicare cost-sharing for such beneficiaries under section 1902(n) of the Social Security Act (42 U.S.C. 1396a(n)). As part of such study, the Secretary shall analyze the effect of such payment limitation on providers who serve a disproportionate share of such beneficiaries.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study under subsection (a). The report shall include recommendations regarding any changes that should be made to the State payment limits under section 1902(n) for qualified medicare beneficiaries to ensure appropriate access to services.

SEC. 126. STUDIES ON PREVENTIVE INTERVENTIONS IN PRIMARY CARE FOR OLDER AMERICANS.

(a) STUDIES.—The Secretary of Health and Human Services, acting through the United States Preventive Services Task Force, shall conduct a series of studies designed to identify preventive interventions that can be delivered in the primary care setting and that are most valuable to older Americans.

(b) MISSION STATEMENT.—The mission statement of the United States Preventive Services Task Force is amended to include the evaluation of services that are of particular relevance to older Americans.

(c) REPORT.—Not later than 1 year after the date of the enactment of this Act, and annually thereafter, the Secretary of Health and Human Services shall submit to Congress a report on the conclusions of the studies conducted under subsection (a), together with recommendations for such legislation and administrative actions as the Secretary considers appropriate.

SEC. 127. MEDPAC STUDY AND REPORT ON MEDICARE COVERAGE OF CARDIAC AND PULMONARY REHABILITATION THERAPY SERVICES.

(a) STUDY.—

(1) IN GENERAL.—The Medicare Payment Advisory Commission shall conduct a study on coverage of cardiac and pulmonary rehabilitation therapy services under the medicare program under title XVIII of the Social Security Act.

(2) FOCUS.—In conducting the study under paragraph (1), the Commission shall focus on the appropriate—

(A) qualifying diagnoses required for coverage of cardiac and pulmonary rehabilitation therapy services;

(B) level of physician direct involvement and supervision in furnishing such services; and

(C) level of reimbursement for such services.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under subsection (a) together with such recommendations for legislation and administrative action as the Commission determines appropriate.

SEC. 128. LIFESTYLE MODIFICATION PROGRAM DEMONSTRATION.

(a) IN GENERAL.—The Secretary of Health and Human Services shall carry out the demonstration project known as the Lifestyle Modification Program Demonstration, as described in the Health Care Financing Administration Memorandum of Understanding entered into on November 13, 2000, and as subsequently modified, (in this section referred to as the ''project'') in accordance with the following requirements:

(1) The project shall include no fewer than 1,800 medicare beneficiaries who complete under the project the entire course of treatment under the Lifestyle Modification Program.

(2) The project shall be conducted over a course of 4 years.

(b) STUDY ON COST-EFFECTIVENESS.—

(1) STUDY.—The Secretary shall conduct a study on the cost-effectiveness of the Lifestyle Modification Program as conducted under the project. In determining whether such Program is cost-effective, the Secretary shall determine (using a control group under a matched paired experimental design) whether expenditures incurred for medicare beneficiaries enrolled under the project exceed expenditures for the control group of medicare beneficiaries with similar health conditions who are not enrolled under the project.

(2) REPORTS.—

(A) INITIAL REPORT.—Not later that 1 year after the date on which 900 medicare beneficiaries have completed the entire course of treatment under the Lifestyle Modification Program under the project, the Secretary shall submit to Congress an initial report on the study conducted under paragraph (1).

(B) FINAL REPORT.—Not later that 1 year after the date on which 1,800 medicare beneficiaries have completed the entire course of treatment under such Program under the project, the Secretary shall submit to Congress a final report on the study conducted under paragraph (1).

TITLE II—RURAL HEALTH CARE IMPROVEMENTS

Subtitle A—Critical Access Hospital Provisions

SEC. 201. CLARIFICATION OF NO BENEFICIARY COST-SHARING FOR CLINICAL DIAGNOSTIC LABORATORY TESTS FURNISHED BY CRITICAL ACCESS HOSPITALS.

(a) PAYMENT CLARIFICATION.—Section 1834(g) (42 U.S.C. 1395m(g)) is amended by adding at the end the following new paragraph:

''(4) NO BENEFICIARY COST-SHARING FOR CLINICAL DIAGNOSTIC LABORATORY SERVICES.—No coinsurance, deductible, copayment, or other cost-sharing otherwise applicable under this part shall apply with respect to clinical diagnostic laboratory services furnished as an outpatient critical access hospital service. Nothing in this title shall be construed as providing for payment for clinical diagnostic laboratory services furnished as part of outpatient critical access hospital services, other than on the basis described in this subsection.''.

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) Paragraphs (1)(D)(i) and (2)(D)(i) of section 1833(a) (42 U.S.C. 1395l(a)) are each amended by striking ''or which are furnished on an outpatient basis by a critical access hospital''.

(2) Section 403(d)(2) of BBRA (113 Stat. 1501A–371) is amended by striking ''The amendment made by subsection (a) shall apply'' and inserting ''Paragraphs (1) through (3) of section 1834(g) of the Social Security Act (as amended by paragraph (1)) apply''.

(c) EFFECTIVE DATES.—The amendment made—

(1) by subsection (a) shall apply to services furnished on or after the date of the enactment of BBRA;

(2) by subsection (b)(1) shall apply as if included in the enactment of section 403(e)(1) of BBRA (113 Stat. 1501A–371); and

(3) by subsection (b)(2) shall apply as if included in the enactment of section 403(d)(2) of BBRA (113 Stat. 1501A–371).

SEC. 202. ASSISTANCE WITH FEE SCHEDULE PAYMENT FOR PROFESSIONAL SERVICES UNDER ALL-INCLUSIVE RATE.

(a) IN GENERAL.—Section 1834(g)(2)(B) (42 U.S.C. 1395m(g)(2)(B)) is amended by inserting ''115 percent of'' before ''such amounts''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply with respect to items and services furnished on or after July 1, 2001.

SEC. 203. EXEMPTION OF CRITICAL ACCESS HOSPITAL SWING BEDS FROM SNF PPS.

(a) IN GENERAL.—Section 1888(e)(7) (42 U.S.C. 1395yy(e)(7)) is amended—

(1) in the heading, by striking ''TRANSITION FOR'' and inserting ''TREATMENT OF'';

(2) in subparagraph (A), by striking ''IN GENERAL.—The'' and inserting ''TRANSITION.—Subject to subparagraph (C), the'';

(3) in subparagraph (A), by inserting ''(other than critical access hospitals)'' after ''facilities described in subparagraph (B)'';

(4) in subparagraph (B), by striking '', for which payment'' and all that follows before the period; and

(5) by adding at the end the following new subparagraph:

''(C) EXEMPTION FROM PPS OF SWING-BED SERVICES FURNISHED IN CRITICAL ACCESS HOSPITALS.—The prospective payment system established under this subsection shall not apply to services furnished by a critical access hospital pursuant to an agreement under section 1883.''.

(b) PAYMENT ON A REASONABLE COST BASIS FOR SWING BED SERVICES FURNISHED BY CRITICAL ACCESS HOSPITALS.—Section 1883(a) (42 U.S.C. 1395tt(a)) is amended—

(1) in paragraph (2)(A), by inserting ''(other than a critical access hospital)'' after ''any hospital''; and

(2) by adding at the end the following new paragraph:

''(3) Notwithstanding any other provision of this title, a critical access hospital shall be paid for covered skilled nursing facility services furnished under an agreement entered into under this section on the basis of the reasonable costs of such services (as determined under section 1861(v)).''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to cost reporting periods beginning on or after the date of the enactment of this Act.

SEC. 204. PAYMENT IN CRITICAL ACCESS HOSPITALS FOR EMERGENCY ROOM ON-CALL PHYSICIANS.

(a) IN GENERAL.—Section 1834(g) (42 U.S.C. 1395m(g)), as amended by section 201(a), is further amended by adding at the end the following new paragraph:

''(5) COVERAGE OF COSTS FOR EMERGENCY ROOM ON-CALL PHYSICIANS.—In determining the reasonable costs of outpatient critical access hospital services under paragraphs (1) and (2)(A), the Secretary shall recognize as allowable costs, amounts (as defined by the Secretary) for reasonable compensation and related costs for emergency room physicians who are on-call (as defined by the Secretary) but who are not present on the premises of the critical access hospital involved, and are not otherwise furnishing physicians' services and are not on-call at any other provider or facility.''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to cost reporting periods beginning on or after October 1, 2001.

SEC. 205. TREATMENT OF AMBULANCE SERVICES FURNISHED BY CERTAIN CRITICAL ACCESS HOSPITALS.

(a) IN GENERAL.—Section 1834(l) (42 U.S.C. 1395m(l)) is amended by adding at the end the following new paragraph:

''(8) SERVICES FURNISHED BY CRITICAL ACCESS HOSPITALS.—Notwithstanding any other provision of this subsection, the Secretary shall pay the reasonable costs incurred in furnishing ambulance services if such services are furnished—

''(A) by a critical access hospital (as defined in section 1861(mm)(1)), or

''(B) by an entity that is owned and operated by a critical access hospital,

but only if the critical access hospital or entity is the only provider or supplier of ambulance services that is located within a 35-mile drive of such critical access hospital.''.

(b) CONFORMING AMENDMENT.—Section 1833(a)(1)(R) (42 U.S.C. 1395l(a)(1)(R)) is amended—

(1) by striking ''ambulance service,'' and inserting ''ambulance services, (i)''; and

(2) by inserting before the comma at the end the following: ''and (ii) with respect to ambulance services described in section 1834(l)(8), the amounts paid shall be the amounts determined under section 1834(g) for outpatient critical access hospital services''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to services furnished on or after the date of the enactment of this Act.

SEC. 206. GAO STUDY ON CERTAIN ELIGIBILITY REQUIREMENTS FOR CRITICAL ACCESS HOSPITALS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study on the eligibility requirements for critical access hospitals under section 1820(c) of the Social Security Act (42 U.S.C. 1395i–4(c)) with respect to limitations on average length of stay and number of beds in such a hospital, including an analysis of—

(1) the feasibility of having a distinct part unit as part of a critical access hospital for purposes of the medicare program under title XVIII of such Act; and

(2) the effect of seasonal variations in patient admissions on critical access hospital eligibility requirements with respect to limitations on average annual length of stay and number of beds.

(b) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Comptroller General shall submit to Congress a report on the study conducted under subsection (a) together with recommendations regarding—

(1) whether distinct part units should be permitted as part of a critical access hospital under the medicare program;

(2) if so permitted, the payment methodologies that should apply with respect to services provided by such units;

(3) whether, and to what extent, such units should be included in or excluded from the bed limits applicable to critical access hospitals under the medicare program; and

(4) any adjustments to such eligibility requirements to account for seasonal variations in patient admissions.

Subtitle B—Other Rural Hospitals Provisions

SEC. 211. TREATMENT OF RURAL DISPROPORTIONATE SHARE HOSPITALS.

(a) APPLICATION OF UNIFORM THRESHOLD.—Section 1886(d)(5)(F)(v) (42 U.S.C. 1395ww(d)(5)(F)(v)) is amended—

(1) in subclause (II), by inserting ''(or 15 percent, for discharges occurring on or after April 1, 2001)'' after ''30 percent'';

(2) in subclause (III), by inserting ''(or 15 percent, for discharges occurring on or after April 1, 2001)'' after ''40 percent''; and

(3) in subclause (IV), by inserting ''(or 15 percent, for discharges occurring on or after April 1, 2001)'' after ''45 percent''.

(b) ADJUSTMENT OF PAYMENT FORMULAS.—

(1) SOLE COMMUNITY HOSPITALS.—Section 1886(d)(5)(F) (42 U.S.C. 1395ww(d)(5)(F)) is amended—

(A) in clause (iv)(VI), by inserting after ''10 percent'' the following: ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (x)''; and

(B) by adding at the end the following new clause:

''(x) For purposes of clause (iv)(VI) (relating to sole community hospitals), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

''(I) is less than 19.3, the disproportionate share —adjustment percentage is determined in accordance with the following formula: (P–15)(.65) + 2.5;

''(II) is equal to or exceeds 19.3, but is less than 30.0, such adjustment percentage is equal to 5.25 percent; or

''(III) is equal to or exceeds 30, such adjustment percentage is equal to 10 percent,

where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).''.

(2) RURAL REFERRAL CENTERS.—Such section is further amended—

(A) in clause (iv)(V), by inserting after ''clause (viii)'' the following: ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xi)''; and

(B) by adding at the end the following new clause:

''(xi) For purposes of clause (iv)(V) (relating to rural referral centers), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

''(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P–15)(.65) + 2.5;

''(II) is equal to or exceeds 19.3, but is less than 30.0, such adjustment percentage is equal to 5.25 percent; or

''(III) is equal to or exceeds 30, such adjustment percentage is determined in accordance with the following formula: (P–30)(.6) + 5.25,

where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).''.

(3) SMALL RURAL HOSPITALS GENERALLY.—Such section is further amended—

(A) in clause (iv)(III), by inserting after ''4 percent'' the following: ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xii)''; and

(B) by adding at the end the following new clause:

''(xii) For purposes of clause (iv)(III) (relating to small rural hospitals generally), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

''(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P–15)(.65) + 2.5; or

''(II) is equal to or exceeds 19.3, such adjustment percentage is equal to 5.25 percent,

where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).''.

(4) HOSPITALS THAT ARE BOTH SOLE COMMUNITY HOSPITALS AND RURAL REFERRAL CENTERS.—Such section is further amended, in clause (iv)(IV), by inserting after ''clause (viii)'' the following: ''or, for discharges occurring on or after April 1, 2001, the greater of the percentages determined under clause (x) or (xi)''.

(5) URBAN HOSPITALS WITH LESS THAN 100 BEDS.—Such section is further amended—

(A) in clause (iv)(II), by inserting after ''5 percent'' the following: ''or, for discharges occurring on or after April 1, 2001, is equal to the percent determined in accordance with clause (xiii)''; and

(B) by adding at the end the following new clause:

''(xiii) For purposes of clause (iv)(II) (relating to urban hospitals with less than 100 beds), in the case of a hospital for a cost reporting period with a disproportionate patient percentage (as defined in clause (vi)) that—

''(I) is less than 19.3, the disproportionate share adjustment percentage is determined in accordance with the following formula: (P–15)(.65) + 2.5; or

''(II) is equal to or exceeds 19.3, such adjustment percentage is equal to 5.25 percent,

where 'P' is the hospital's disproportionate patient percentage (as defined in clause (vi)).''.

SEC. 212. OPTION TO BASE ELIGIBILITY FOR MEDICARE DEPENDENT, SMALL RURAL HOSPITAL PROGRAM ON DISCHARGES DURING 2 OF THE 3 MOST RECENTLY AUDITED COST REPORTING PERIODS.

(a) IN GENERAL.—Section 1886(d)(5)(G)(iv)(IV) (42 U.S.C. 1395ww(d)(5)(G)(iv)(IV)) is amended by inserting '', or 2 of the 3 most recently audited cost reporting periods for which the Secretary has a settled cost report,'' after ''1987''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply with respect to cost reporting periods beginning on or after April 1, 2001.

SEC. 213. EXTENSION OF OPTION TO USE REBASED TARGET AMOUNTS TO ALL SOLE COMMUNITY HOSPITALS.

(a) IN GENERAL.—Section 1886(b)(3)(I)(i) (42 U.S.C. 1395ww(b)(3)(I)(i)) is amended—

(1) in the matter preceding subclause (I), by striking ''that for its cost reporting period beginning during 1999'' and all that follows through ''for such target amount'' and inserting ''there shall be substituted for the amount otherwise

determined under subsection (d)(5)(D)(i), if such substitution results in a greater amount of payment under this section for the hospital'';

(2) in subclause (I), by striking ''target amount otherwise applicable'' and all that follows through ''target amount')'' and inserting ''the amount otherwise applicable to the hospital under subsection (d)(5)(D)(i) (referred to in this clause as the 'subsection (d)(5)(D)(i) amount')''; and

(3) in each of subclauses (II) and (III), by striking ''subparagraph (C) target amount'' and inserting ''subsection (d)(5)(D)(i) amount''.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect as if included in the enactment of section 405 of BBRA (113 Stat. 1501A–372).

SEC. 214. MEDPAC ANALYSIS OF IMPACT OF VOLUME ON PER UNIT COST OF RURAL HOSPITALS WITH PSYCHIATRIC UNITS.

The Medicare Payment Advisory Commission, in its study conducted pursuant to subsection (a) of section 411 of BBRA (113 Stat. 1501A–377), shall include—

(1) in such study an analysis of the impact of volume on the per unit cost of rural hospitals with psychiatric units; and

(2) in its report under subsection (b) of such section a recommendation on whether special treatment for such hospitals may be warranted.

Subtitle C—Other Rural Provisions

SEC. 221. ASSISTANCE FOR PROVIDERS OF AMBULANCE SERVICES IN RURAL AREAS.

(a) TRANSITIONAL ASSISTANCE IN CERTAIN MILEAGE RATES.—Section 1834(l) (42 U.S.C. 1395m(l)) is amended by adding at the end the following new paragraph:

''(8) TRANSITIONAL ASSISTANCE FOR RURAL PROVIDERS.—In the case of ground ambulance services furnished on or after July 1, 2001, and before January 1, 2004, for which the transportation originates in a rural area (as defined in section 1886(d)(2)(D)) or in a rural census tract of a metropolitan statistical area (as determined under the most recent modification of the Goldsmith Modification, originally published in the Federal Register on February 27, 1992 (57 Fed. Reg. 6725)), the fee schedule established under this subsection shall provide that, with respect to the payment rate for mileage for a trip above 17 miles, and up to 50 miles, the rate otherwise established shall be increased by not less than ½ of the additional payment per mile established for the first 17 miles of such a trip originating in a rural area.''.

(b) GAO STUDIES ON THE COSTS OF AMBULANCE SERVICES FURNISHED IN RURAL AREAS.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on each of the matters described in paragraph (2).

(2) MATTERS DESCRIBED.—The matters referred to in paragraph (1) are the following:

(A) The cost of efficiently providing ambulance services for trips originating in rural areas, with special emphasis on collection of cost data from rural providers.

(B) The means by which rural areas with low population densities can be identified for the purpose of designating areas in which the cost of providing ambulance services would be expected to be higher than similar services provided in more heavily populated areas because of low usage. Such study shall also include an analysis of the additional costs of providing ambulance services in areas designated under the previous sentence.

(3) REPORT.—Not later than June 30, 2002, the Comptroller General shall submit to Congress a report on the results of the studies conducted under paragraph (1) and shall include recommendations on steps that should be taken to assure access to ambulance services in rural areas.

(c) ADJUSTMENT IN RURAL RATES.—In providing for adjustments under subparagraph (D) of section 1834(l)(2) of the Social Security Act (42 U.S.C. 1395m(l)(2)) for years beginning with 2004, the Secretary of Health and Human Services shall take into consideration the recommendations contained in the report under subsection (b)(2) and shall adjust the fee schedule payment rates under such section for ambulance services provided in low density rural areas based on the increased cost (if any) of providing such services in such areas.

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after July 1, 2001. In applying such amendment to services furnished on or after such date and before January 1, 2002, the amount of the rate increase provided under such amendment shall be equal to $1.25 per mile.

SEC. 222. PAYMENT FOR CERTAIN PHYSICIAN ASSISTANT SERVICES.

(a) PAYMENT FOR CERTAIN PHYSICIAN ASSISTANT SERVICES.—Section 1842(b)(6)(C) (42 U.S.C. 1395u(b)(6)(C)) is amended—

(1) by striking ''for such services provided before January 1, 2003,''; and

(2) by striking the semicolon at the end and inserting a comma.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect on the date of the enactment of this Act.

SEC. 223. REVISION OF MEDICARE REIMBURSEMENT FOR TELEHEALTH SERVICES.

(a) TIME LIMIT FOR BBA PROVISION.—Section 4206(a) of BBA (42 U.S.C. 1395l note) is amended by striking ''Not later than January 1, 1999'' and inserting ''For services furnished on and after January 1, 1999, and before October 1, 2001''.

(b) EXPANSION OF MEDICARE PAYMENT FOR TELEHEALTH SERVICES.—Section 1834 (42 U.S.C. 1395m) is amended by adding at the end the following new subsection:

''(m) PAYMENT FOR TELEHEALTH SERVICES.—

''(1) IN GENERAL.—The Secretary shall pay for telehealth services that are furnished via a telecommunications system by a physician (as defined in section 1861(r)) or a practitioner (described in section 1842(b)(18)(C)) to an eligible telehealth individual enrolled under this part notwithstanding that the individual physician or practitioner providing the telehealth service is not at the same location as the beneficiary. For purposes of the preceding sentence, in the case of any Federal telemedicine demonstration program conducted in Alaska or Hawaii, the term 'telecommunications system' includes store-and-forward technologies that provide for the asynchronous transmission of health care information in single or multimedia formats.

''(2) PAYMENT AMOUNT.—

''(A) DISTANT SITE.—The Secretary shall pay to a physician or practitioner located at a distant site that furnishes a telehealth service to an eligible telehealth individual an amount equal to the amount that such physician or practitioner would have been paid under this title had such service been furnished without the use of a telecommunications system.

''(B) FACILITY FEE FOR ORIGINATING SITE.—With respect to a telehealth service, subject to section 1833(a)(1)(U), there shall be paid to the originating site a facility fee equal to—

''(i) for the period beginning on October 1, 2001, and ending on December 31, 2001, and for 2002, $20; and

''(ii) for a subsequent year, the facility fee specified in clause (i) or this clause for the preceding year increased by the percentage increase in the MEI (as defined in section 1842(i)(3)) for such subsequent year.

''(C) TELEPRESENTER NOT REQUIRED.—Nothing in this subsection shall be construed as requiring an eligible telehealth individual to be presented by a physician or practitioner at the originating site for the furnishing of a service via a telecommunications system, unless it is medically necessary (as determined by the physician or practitioner at the distant site).

''(3) LIMITATION ON BENEFICIARY CHARGES.—

''(A) PHYSICIAN AND PRACTITIONER.—The provisions of section 1848(g) and subparagraphs (A) and (B) of section 1842(b)(18) shall apply to a physician or practitioner receiving payment under this subsection in the same manner as they apply to physicians or practitioners under such sections.

''(B) ORIGINATING SITE.—The provisions of section 1842(b)(18) shall apply to originating sites receiving a facility fee in the same manner as they apply to practitioners under such section.

''(4) DEFINITIONS.—For purposes of this subsection:

''(A) DISTANT SITE.—The term 'distant site' means the site at which the physician or practitioner is located at the time the service is provided via a telecommunications system.

''(B) ELIGIBLE TELEHEALTH INDIVIDUAL.—The term 'eligible telehealth individual' means an individual enrolled under this part who receives a telehealth service furnished at an originating site.

''(C) ORIGINATING SITE.—

''(i) IN GENERAL.—The term 'originating site' means only those sites described in clause (ii) at which the eligible telehealth individual is located at the time the service is furnished via a telecommunications system and only if such site is located—

''(I) in an area that is designated as a rural health professional shortage area under section 332(a)(1)(A) of the Public Health Service Act (42 U.S.C. 254e(a)(1)(A));

''(II) in a county that is not included in a Metropolitan Statistical Area; or

''(III) from an entity that participates in a Federal telemedicine demonstration project that has been approved by (or receives funding from) the Secretary of Health and Human Services as of December 31, 2000.

''(ii) SITES DESCRIBED.—The sites referred to in clause (i) are the following sites:

''(I) The office of a physician or practitioner.

''(II) A critical access hospital (as defined in section 1861(mm)(1)).

''(III) A rural health clinic (as defined in section 1861(aa)(s)).

''(IV) A Federally qualified health center (as defined in section 1861(aa)(4)).

''(V) A hospital (as defined in section 1861(e)).

''(D) PHYSICIAN.—The term 'physician' has the meaning given that term in section 1861(r).

''(E) PRACTITIONER.—The term 'practitioner' has the meaning given that term in section 1842(b)(18)(C).

''(F) TELEHEALTH SERVICE.—

''(i) IN GENERAL.—The term 'telehealth service' means professional consultations, office visits, and office psychiatry services (identified as of July 1, 2000, by HCPCS codes 99241–99275, 99201–99215, 90804–90809, and 90862 (and as subsequently modified by the Secretary)), and any additional service specified by the Secretary.

''(ii) YEARLY UPDATE.—The Secretary shall establish a process that provides, on an annual basis, for the addition or deletion of services (and HCPCS codes), as appropriate, to those specified in clause (i) for authorized payment under paragraph (1).''.

(c) CONFORMING AMENDMENT.—Section 1833(a)(1) (42 U.S.C. 1395l(1)), as amended by section 105(c), is further amended—

(1) by striking ''and (T)'' and inserting ''(T)''; and

(2) by inserting before the semicolon at the end the following: '', and (U) with respect to facility fees described in section 1834(m)(2)(B), the amounts paid shall be 80 percent of the lesser of the actual charge or the amounts specified in such section''.

(d) STUDY AND REPORT ON ADDITIONAL COVERAGE.—

(1) STUDY.—The Secretary of Health and Human Services shall conduct a study to identify—

(A) settings and sites for the provision of telehealth services that are in addition to those permitted under section 1834(m) of the Social Security Act, as added by subsection (b);

(B) practitioners that may be reimbursed under such section for furnishing telehealth services that are in addition to the practitioners that may be reimbursed for such services under such section; and

(C) geographic areas in which telehealth services may be reimbursed that are in addition to the geographic areas where such services may be reimbursed under such section.

(2) REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation that the Secretary determines are appropriate.

(e) EFFECTIVE DATE.—The amendments made by subsections (b) and (c) shall be effective for services furnished on or after October 1, 2001.

SEC. 224. EXPANDING ACCESS TO RURAL HEALTH CLINICS.

(a) IN GENERAL.—The matter in section 1833(f) (42 U.S.C. 1395l(f)) preceding paragraph (1) is amended by striking ''rural hospitals'' and inserting ''hospitals''.

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall apply to services furnished on or after July 1, 2001.

SEC. 225. MEDPAC STUDY ON LOW-VOLUME, ISOLATED RURAL HEALTH CARE PROVIDERS.

(a) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on the effect of low patient and procedure volume on the financial status of low-volume, isolated rural health care providers participating in the medicare program under title XVIII of the Social Security Act.

(b) REPORT.—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under subsection (a) indicating—

(1) whether low-volume, isolated rural health care providers are having, or may have, significantly decreased medicare margins or other financial difficulties resulting from any of the payment methodologies described in subsection (c);

(2) whether the status as a low-volume, isolated rural health care provider should be designated under the medicare program and any criteria that should be used to qualify for such a status; and

(3) any changes in the payment methodologies described in subsection (c) that are necessary to provide appropriate reimbursement under the medicare program to low-volume, isolated rural health care providers (as designated pursuant to paragraph (2)).

(c) PAYMENT METHODOLOGIES DESCRIBED.—The payment methodologies described in this subsection are the following:

(1) The prospective payment system for hospital outpatient department services under section 1833(t) of the Social Security Act (42 U.S.C. 1395l(t)).

(2) The fee schedule for ambulance services under section 1834(l) of such Act (42 U.S.C. 1395m(l)).

(3) The prospective payment system for inpatient hospital services under section 1886 of such Act (42 U.S.C. 1395ww).

(4) The prospective payment system for routine service costs of skilled nursing facilities under section 1888(e) of such Act (42 U.S.C. 1395yy(e)).

(5) The prospective payment system for home health services under section 1895 of such Act (42 U.S.C. 1395fff).

TITLE III—PROVISIONS RELATING TO PART A

Subtitle A—Inpatient Hospital Services

SEC. 301. REVISION OF ACUTE CARE HOSPITAL PAYMENT UPDATE FOR 2001.

(a) IN GENERAL.—Section 1886(b)(3)(B)(i) (42 U.S.C. 1395ww(b)(3)(B)(i)) is amended—

(1) in subclause (XVI), by striking ''minus 1.1 percentage points for hospitals (other than sole community hospitals) in all areas, and the market basket percentage increase for sole community hospitals,'' and inserting ''for hospitals in all areas,'';

(2) in subclause (XVII)—

(A) by striking ''minus 1.1 percentage points'' and inserting ''minus 0.55 percentage points; and

(B) by striking ''and'' at the end;

(3) by redesignating subclause (XVIII) as subclause (XIX);

(4) in subclause (XIX), as so redesignated, by striking ''fiscal year 2003'' and inserting ''fiscal year 2004''; and

(5) by inserting after subclause (XVII) the following new subclause:

''(XVIII) for fiscal year 2003, the market basket percentage increase minus 0.55 percentage points for hospitals in all areas, and''.

(b) SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001.—Notwithstanding the amendment made by subsection (a), for purposes of making payments for fiscal year 2001 for inpatient hospital services furnished by subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)), the ''applicable percentage increase'' referred to in section 1886(b)(3)(B)(i) of such Act (42 U.S.C. 1395ww(b)(3)(B)(i))—

(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be determined in accordance with subclause (XVI) of such section as in effect on the day before the date of the enactment of this Act; and

(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall be equal to—

(A) the market basket percentage increase plus 1.1 percentage points for hospitals (other than sole community hospitals) in all areas; and

(B) the market basket percentage increase for sole community hospitals.

(c) CONSIDERATION OF PRICE OF BLOOD AND BLOOD PRODUCTS IN MARKET BASKET INDEX.—The Secretary of Health and Human Services shall, when next (after the date of the enactment of this Act) rebasing and revising the hospital market basket index (as defined in section 1886(b)(3)(B)(iii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(iii))), consider the prices of blood and blood products purchased by hospitals and determine whether those prices are adequately reflected in such index.

(d) MEDPAC STUDY AND REPORT REGARDING CERTAIN HOSPITAL COSTS.—

(1) STUDY.—The Medicare Payment Advisory Commission shall conduct a study on—

(A) any increased costs incurred by subsection (d) hospitals (as defined in paragraph (1)(B) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d))) in providing inpatient hospital services to medicare beneficiaries under title XVIII of such Act during the period beginning on October 1, 1983, and ending on September 30, 1999, that were attributable to—

(i) complying with new blood safety measure requirements; and

(ii) providing such services using new technologies;

(B) the extent to which the prospective payment system for such services under such section provides adequate and timely recognition of such increased costs;

(C) the prospects for (and to the extent practicable, the magnitude of) cost increases that hospitals will incur in providing such services that are attributable to complying with new blood safety measure requirements and providing such services using new technologies during the 10 years after the date of the enactment of this Act; and

(D) the feasibility and advisability of establishing mechanisms under such payment system to provide for more timely and accurate recognition of such cost increases in the future.

(2) CONSULTATION.—In conducting the study under this subsection, the Commission shall consult with representatives of the blood community, including—

(A) hospitals;

(B) organizations involved in the collection, processing, and delivery of blood; and

(C) organizations involved in the development of new blood safety technologies.

(3) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Commission shall submit to Congress a report on the study conducted under paragraph (1) together with such recommendations for legislation and administrative action as the Commission determines appropriate.

(e) ADJUSTMENT FOR INPATIENT CASE MIX CHANGES.—

(1) IN GENERAL.—Section 1886(d)(3)(A) (42 U.S.C. 1395ww(d)(3)(A)) is amended by adding at the end the following new clause:

''(vi) Insofar as the Secretary determines that the adjustments under paragraph (4)(C)(i) for a previous fiscal year (or estimates that such adjustments for a future fiscal year) did (or are likely to) result in a change in aggregate payments under this subsection during the fiscal year that are a result of changes in the coding or classification of discharges that do not reflect real changes in case mix, the Secretary may adjust the average standardized amounts computed under this paragraph for subsequent fiscal years so as to eliminate the effect of such coding or classification changes.''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) shall apply to discharges occurring on or after October 1, 2001.

SEC. 302. ADDITIONAL MODIFICATION IN TRANSITION FOR INDIRECT MEDICAL EDUCATION (IME) PERCENTAGE ADJUSTMENT.

(a) IN GENERAL.—Section 1886(d)(5)(B)(ii) (42 U.S.C. 1395ww(d)(5)(B)(ii)) is amended—

(1) in subclause (V) by striking ''and'' at the end;

(2) by redesignating subclause (VI) as subclause (VII);

(3) in subclause (VII) as so redesignated, by striking ''2001'' and inserting ''2002''; and

(4) by inserting after subclause (V) the following new subclause:

''(VI) during fiscal year 2002, 'c' is equal to 1.6; and''.

(b) SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001.—Notwithstanding paragraph (5)(B)(ii)(V) of section 1886(d) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(B)(ii)(V)), for purposes of making payments for subsection (d) hospitals (as defined in paragraph (1)(B) of such section) with indirect costs of medical education, the indirect teaching adjustment factor referred to in paragraph (5)(B)(ii) of such section shall be determined, for discharges occurring on or after April 1, 2001, and before October 1, 2001, as if ''c'' in paragraph (5)(B)(ii)(V) of such section equalled 1.66 rather than 1.54.

(c) CONFORMING AMENDMENT RELATING TO DETERMINATION OF STANDARDIZED AMOUNT.—Section 1886(d)(2)(C)(i) (42 U.S.C. 1395ww(d)(2)(C)(i)) is amended by inserting ''or of section 302 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'' after ''Balanced Budget Refinement Act of 1999''.

(d) CLERICAL AMENDMENTS.—Section 1886(d)(5)(B) (42 U.S.C. 1395ww(d)(5)(B)), as amended by subsection (a), is further amended by moving the indentation of each of the following 2 ems to the left:

(1) Clauses (ii), (v), and (vi).

(2) Subclauses (I) (II), (III), (IV), (V), and (VII) of clause (ii).

(3) Subclauses (I) and (II) of clause (vi) and the flush sentence at the end of such clause.

SEC. 303. DECREASE IN REDUCTIONS FOR DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS.

(a) IN GENERAL.—Section 1886(d)(5)(F)(ix) (42 U.S.C. 1395ww(d)(5)(F)(ix)) is amended—

(1) in subclause (III), by striking ''each of'' and by inserting ''and 2 percent, respectively'' after ''3 percent''; and

(2) in subclause (IV), by striking ''4 percent'' and inserting ''3 percent''.

(b) SPECIAL RULE FOR PAYMENT FOR FISCAL YEAR 2001.—Notwithstanding the amendment made by subsection (a)(1), for purposes of making disproportionate share payments for subsection (d) hospitals (as defined in section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) for fiscal year 2001, the additional payment amount otherwise determined under clause (ii) of section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F))—

(1) for discharges occurring on or after October 1, 2000, and before April 1, 2001, shall be adjusted as provided by clause (ix)(III) of such section as in effect on the day before the date of the enactment of this Act; and

(2) for discharges occurring on or after April 1, 2001, and before October 1, 2001, shall, instead of being reduced by 3 percent as provided by clause (ix)(III) of such section as in effect after the date of the enactment of this Act, be reduced by 1 percent.

(c) CONFORMING AMENDMENTS RELATING TO DETERMINATION OF STANDARDIZED AMOUNT.—Section 1886(d)(2)(C)(iv) (42 U.S.C. 1395ww(d)(2)(C)(iv)), is amended—

(1) by striking ''1989 or'' and inserting ''1989,''; and

(2) by inserting '', or the enactment of section 303 of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000'' after ''Omnibus Budget Reconciliation Act of 1990''.

(d) TECHNICAL AMENDMENT.—

(1) IN GENERAL.—Section 1886(d)(5)(F)(i) (42 U.S.C. 1395ww(d)(5)(F)(i)) is amended by striking ''and before October 1, 1997,''.

(2) EFFECTIVE DATE.—The amendment made by paragraph (1) is effective as if included in the enactment of BBA.

(e) REFERENCE TO CHANGES IN DSH FOR RURAL HOSPITALS.—For additional changes in the DSH program for rural hospitals, see section 211.

SEC. 304. WAGE INDEX IMPROVEMENTS.

(a) DURATION OF WAGE INDEX RECLASSIFICATION; USE OF 3-YEAR WAGE DATA.—Section 1886(d)(10)(D) (42 U.S.C. 1395ww(d)(10)(D)) is amended by adding at the end the following new clauses:

''(v) Any decision of the Board to reclassify a subsection (d) hospital for purposes of the adjustment factor described in subparagraph (C)(i)(II) for fiscal year 2001 or any fiscal year thereafter shall be effective for a period of 3 fiscal years, except that the Secretary shall establish procedures under which a subsection (d) hospital may elect to terminate such reclassification before the end of such period.

''(vi) Such guidelines shall provide that, in making decisions on applications for reclassification for the purposes described in clause (v) for fiscal year 2003 and any succeeding fiscal year, the Board shall base any comparison of the average hourly wage for the hospital with the average hourly wage for hospitals in an area on—

''(I) an average of the average hourly wage amount for the hospital from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys; and

''(II) an average of the average hourly wage amount for hospitals in such area from the most recently published hospital wage survey data of the Secretary (as of the date on which the hospital applies for reclassification) and such amount from each of the two immediately preceding surveys.''.

(b) PROCESS TO PERMIT STATEWIDE WAGE INDEX CALCULATION AND APPLICATION.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall establish a process (based on the voluntary process utilized by the Secretary of Health and Human Services under section 1848 of the Social Security Act (42 U.S.C. 1395w–4) for purposes of computing and applying a statewide geographic adjustment factor) under which an appropriate statewide entity may apply to have all the geographic areas in a State treated as a single geographic area for purposes of computing and applying the area wage index under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)). Such process shall be established by October 1, 2001, for reclassifications beginning in fiscal year 2003.

(2) PROHIBITION ON INDIVIDUAL HOSPITAL RECLASSIFICATION.—Notwithstanding any other provision of law, if the Secretary applies a statewide geographic wage index under paragraph (1) with respect to a State, any application submitted by a hospital in that State under section 1886(d)(10) of the Social Security Act (42 U.S.C. 1395ww(d)(10)) for geographic reclassification shall not be considered.

(c) COLLECTION OF INFORMATION ON OCCUPATIONAL MIX.—

(1) IN GENERAL.—The Secretary of Health and Human Services shall provide for the collection of data every 3 years on occupational mix for employees of each subsection (d) hospital (as defined in section 1886(d)(1)(D) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(D))) in the provision of inpatient hospital services, in order to construct an occupational mix adjustment in the hospital area wage index applied under section 1886(d)(3)(E) of such Act (42 U.S.C. 1395ww(d)(3)(E)).

(2) APPLICATION.—The third sentence of section 1886(d)(3)(E) (42 U.S.C. 1395ww(d)(3)(E)) is amended by striking ''To the extent determined feasible by the Secretary, such survey shall measure'' and inserting ''Not less often than once every 3 years the Secretary (through such survey or otherwise) shall measure''.

(3) EFFECTIVE DATE.—By not later than September 30, 2003, for application beginning October 1, 2004, the Secretary shall first complete—

(A) the collection of data under paragraph (1); and

(B) the measurement under the third sentence of section 1886(d)(3)(E), as amended by paragraph (2).

SEC. 305. PAYMENT FOR INPATIENT SERVICES OF REHABILITATION HOSPITALS.

(a) ASSISTANCE WITH ADMINISTRATIVE COSTS ASSOCIATED WITH COMPLETION OF PATIENT ASSESSMENT.—Section 1886(j)(3)(B) (42 U.S.C. 1395ww(j)(3)(B)) is amended by striking ''98 percent'' and inserting ''98 percent for fiscal year 2001 and 100 percent for fiscal year 2002''.

(b) ELECTION TO APPLY FULL PROSPECTIVE PAYMENT RATE WITHOUT PHASE-IN.—

(1) IN GENERAL.—Paragraph (1) of section 1886(j) (42 U.S.C. 1395ww(j)) is amended—

(A) in subparagraph (A), by inserting ''other than a facility making an election under subparagraph (F)'' before ''in a cost reporting period'';

(B) in subparagraph (B), by inserting ''or, in the case of a facility making an election under subparagraph (F), for any cost reporting period described in such subparagraph,'' after ''2002,''; and

(C) by adding at the end the following new subparagraph:

''(F) ELECTION TO APPLY FULL PROSPECTIVE PAYMENT SYSTEM.—A rehabilitation facility may elect, not later than 30 days before its first cost reporting period for which the payment methodology under this subsection applies to the facility, to have payment made to the facility under this subsection under the provisions of subparagraph (B) (rather than subparagraph (A)) for each cost reporting period to which such payment methodology applies.''.

(2) CLARIFICATION.—Paragraph (3)(B) of such section is amended by inserting ''but not taking into account any payment adjustment resulting from an election permitted under paragraph (1)(F)'' after ''paragraphs (4) and (6)''.

(c) EFFECTIVE DATE.—The amendments made by this section take effect as if included in the enactment of BBA.

SEC. 306. PAYMENT FOR INPATIENT SERVICES OF PSYCHIATRIC HOSPITALS.

With respect to hospitals described in clause (i) of section 1886(d)(1)(B) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)) and psychiatric units described in the matter following clause (v) of such section, in making incentive payments to such hospitals under section 1886(b)(1)(A) of such Act (42 U.S.C. 1395ww(b)(1)(A)) for cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, the Secretary of Health and Human Services, in clause (ii) of such section, shall substitute ''3 percent'' for ''2 percent''.

SEC. 307. PAYMENT FOR INPATIENT SERVICES OF LONG-TERM CARE HOSPITALS.

(a) INCREASED TARGET AMOUNTS AND CAPS FOR LONG-TERM CARE HOSPITALS BEFORE IMPLEMENTATION OF THE PROSPECTIVE PAYMENT SYSTEM.—

(1) IN GENERAL.—Section 1886(b)(3) (42 U.S.C. 1395ww(b)(3)) is amended—

(A) in subparagraph (H)(ii)(III), by inserting ''subject to subparagraph (J),'' after ''2002,''; and

(B) by adding at the end the following new subparagraph:

''(J) For cost reporting periods beginning during fiscal year 2001, for a hospital described in subsection (d)(1)(B)(iv)—

''(i) the limiting or cap amount otherwise determined under subparagraph (H) shall be increased by 2 percent; and

''(ii) the target amount otherwise determined under subparagraph (A) shall be increased by 25 percent (subject to the limiting or cap amount determined under subparagraph (H), as increased by clause (i)).''.

(2) APPLICATION.—The amendments made by subsection (a) and by section 122 of BBRA (113 Stat. 1501A–331) shall not be taken into account in the development and implementation of the prospective payment system under section 123 of BBRA (113 Stat. 1501A–331).

(b) IMPLEMENTATION OF PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS.—

(1) MODIFICATION OF REQUIREMENT.—In developing the prospective payment system for payment for inpatient hospital services provided in long-term care hospitals described in section 1886(d)(1)(B)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(1)(B)(iv)) under the medicare program under title XVIII of such Act required under section 123 of BBRA, the Secretary of Health and Human Services shall examine the feasibility and the impact of basing payment under such a system on the use of existing (or refined) hospital diagnosis-related groups (DRGs) that have been modified to account for different resource use of long-term care hospital patients as well as the use of the most recently available hospital discharge data. The Secretary shall examine and may provide for appropriate adjustments to the long-term hospital payment system, including adjustments to DRG weights, area wage adjustments, geographic reclassification, outliers, updates, and a disproportionate share adjustment consistent with section 1886(d)(5)(F) of the Social Security Act (42 U.S.C. 1395ww(d)(5)(F)).

(2) DEFAULT IMPLEMENTATION OF SYSTEM BASED ON EXISTING DRG METHODOLOGY.—If the Secretary is unable to implement the prospective payment system under section 123 of the BBRA by October 1, 2002, the Secretary shall implement a prospective payment system for such hospitals that bases payment under such a system using existing hospital diagnosis-related groups (DRGs), modified where feasible to account for resource use of long-term care hospital patients using the most recently available hospital discharge data for such services furnished on or after that date.